

EXHIBIT C

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UNITED STATES DISTRICT COURT

3 SOUTHERN DISTRICT OF NEW YORK

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6 SECURITIES AND EXCHANGE)
7 COMMISSION,)
8 Plaintiff,)
9 vs.) NO. 06 CV 2621 (LTF) (DFE)
10 ANDREAS BADIAN, JACOB)
11 SPINNER, MOTTES DRILLMAN,)
12 JEFFREY "DANNY" GRAHAM,)
13 POND SECURITIES)
14 CORPORATION d/b/a POND)
15 EQUITIES, EZRA BIRNBAUM)
16 and SHAYE HIRSCH,)
17 Defendants.)
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DEPOSITION OF JOHN LLANES

Chicago, Illinois

Monday, November 21, 2011

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Reported by:

24 PAULA CAMPBELL, CSR, RDR, CRR, CCP

25 JOB NO. 44026

	Page 2	Page 3
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2		2 APPEARANCES:
3		3 SECURITIES AND EXCHANGE COMMISSION
4		4 Attorneys for the plaintiff
5		5 100 F Street, N.E.
6		6 Washington, D.C. 20549
7		7 BY: KENNETH J. GUIDO, ESQ.
8	November 21, 2011	8
9	12:49 P.M.	9 DLA PIPER
10		10 Attorneys for the defendant Andreas Badian
11		11 2000 University Avenue, 1st Floor
12	Discovery deposition of JOHN LLANES,	12 East Palo Alto, CA 94303
13	held at the offices of DLA PIPER, 203 North	13 BY: JEFFREY B. COOPERSMITH, ESQ.
14	LaSalle Street, Chicago, Illinois, pursuant to	14 ROSENTHAL COLLINS GROUP
15	subpoena before Paula Campbell, CSR, RDR, CRR,	15 Attorneys for the deponent
16	CCP.	16 216 West Jackson Boulevard, Suite 400
17		17 Chicago, IL 60606
18		18 BY: MICHAEL CONTI, ESQ.
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J. LLANES	REPORTER: Would you please raise your	right hand.	JOHN LLANES,	called as a witness, having been duly sworn,	was examined and testified as follows:	EXAMINATION	BY MR. COOPERSMITH:	Q. Good morning (sic), Mr. Llanes.	Am I saying your name right?	A. It's Llanes.	Q. Llanes. Sorry about that.	A. That's all right.	Q. Let me introduce myself. I'm Jeff	Coopersmith, and I'm at a law firm called DLA Piper,	and this is a deposition in the case of SEC versus	Andreas Badian and others. And I represent the	defendant, Mr. Badian in this case.	Do you understand that?	A. Yes.	Q. I just want to go over with you,	Mr. Llanes, some ground rules in terms of the	deposition. First of all, you've already met our	court reporter who will take down every word that's	spoken in the room, unless we are off the record.	J. LLANES	Do you understand that?	A. Yes.	Q. And because of that it's important to give	audible answers, because sometimes people in	conversation tend to nod their head or say something	other than yes or no, and it's important to have a	more formal yes or no to the questions.	Do you understand that?	A. I understand.	Q. Now, you've been placed under oath, and do	you understand that means that you're sworn to tell	the whole and complete truth?	A. I do.	Q. And do you understand that the oath is the	same kind of oath that you take in a courtroom; just	because we are in a conference room, it's no	different?	A. I do.	Q. Okay. Now, I'll be asking you questions	today, but if you don't understand a question, for	any reason, you can just let me know, and I'll try	to help you, or rephrase the question, or something	like that.	A. Okay.

<p style="text-align: right;">Page 6</p> <p>1 J. LLANES</p> <p>2 Q. If you need to take a break for any reason, 3 of course that's fine. Just let me know that as 4 well.</p> <p>5 A. Okay.</p> <p>6 Q. And are you ready to give full and complete 7 testimony today?</p> <p>8 A. I am.</p> <p>9 Q. Any reason why you can't do that?</p> <p>10 A. No reason.</p> <p>11 Q. Okay. Have you been deposed before, 12 Mr. Llanes?</p> <p>13 A. I have not.</p> <p>14 Q. Have you ever given trial testimony?</p> <p>15 A. I have not.</p> <p>16 Q. Did you review any documents to prepare for 17 your deposition this afternoon?</p> <p>18 A. I reviewed two documents, yes.</p> <p>19 Q. What did you review?</p> <p>20 A. I reviewed -- not an e-mail, but these two 21 documents that I pulled from past files.</p> <p>22 Q. Okay. What are the two documents that you 23 are referencing?</p> <p>24 A. One of them was a copy of a note that I had 25 written. It says the remainder of the 2001 tapes,</p>	<p style="text-align: right;">Page 7</p> <p>1 J. LLANES</p> <p>2 all others should be with prior counsel. Questions 3 - please do not hesitate to contact me.</p> <p>4 Q. Okay.</p> <p>5 A. And then the other one was a letter from 6 Mayer Brown, just stating pretty much what the tapes 7 that were given with this.</p> <p>8 Q. Okay. Could I see copy of that?</p> <p>9 A. Sure. Absolutely.</p> <p>10 Q. Okay. We may have to make copies of these.</p> <p>11 A. Sure.</p> <p>12 Q. But -- in fact, what I'll do is I'll just 13 set these aside for now, and we can make copies a 14 little later so we don't waste time.</p> <p>15 THE WITNESS: Do they want to see?</p> <p>16 MR. GUIDO: I saw them over his shoulder.</p> <p>17 MR. COOPERSMITH: We will just make copies 18 at the next break, and then we will maybe get 19 into those.</p> <p>20 Q. Okay. Moving on for the moment, did you 21 receive a copy of a subpoena in this case that 22 brought you to our offices?</p> <p>23 A. I did not receive a copy of a subpoena.</p> <p>24 Q. Okay. I'm going to hand you a subpoena, 25 and since you haven't seen it before, we will just</p>
<p style="text-align: right;">Page 8</p> <p>1 J. LLANES</p> <p>2 consider this to be service for the subpoena.</p> <p>3 And I know that you've never seen it 4 before, but I just want to direct your attention to 5 it now, and I will give a copy to your lawyer as 6 well.</p> <p>7 MR. CONTI: Thank you.</p> <p>8 Q. I just want to direct your attention --</p> <p>9 MR. GUIDO: Can we have this marked as an 10 exhibit, please?</p> <p>11 MR. COOPERSMITH: We could mark it. Yeah, 12 why don't we mark it. We will call it Llanes 13 Exhibit 1.</p> <p>14 (Llanes Exhibit 1 marked for 15 identification.)</p> <p>16 BY MR. COOPERSMITH:</p> <p>17 Q. I will just give you the marked copy, since 18 it's now an exhibit.</p> <p>19 MR. GUIDO: Can I have a copy?</p> <p>20 MR. COOPERSMITH: Oh, sorry. I think, for 21 the record, you already got a copy. Is that 22 right, Mr. Guido?</p> <p>23 MR. GUIDO: I don't know. I mean, I didn't 24 have a copy of this.</p> <p>25 MR. COOPERSMITH: It's the same copy we</p>	<p style="text-align: right;">Page 9</p> <p>1 J. LLANES</p> <p>2 sent you via e-mail.</p> <p>3 BY MR. COOPERSMITH:</p> <p>4 Q. So I just want to direct your attention to 5 the very last page of the subpoena. And since you 6 have never seen it before, I'm also assuming that 7 you haven't brought any documents with you today, is 8 that right, other than the ones you just gave me a 9 minute ago; correct?</p> <p>10 A. No, I have not.</p> <p>11 Q. Okay. So I just want to note that there 12 are some document requests, and I'd ask you to pay 13 attention to that with your counsel and, you know, 14 get back to us when you have a chance to review 15 those.</p> <p>16 Let me just go through them, just so I have 17 an idea of maybe what to expect. Looking at 18 category No. 1, and it's the very last page of 19 Exhibit 1. The first request asks for: "All 20 documents and/or communications between you and the 21 SEC, including counsel for the SEC, concerning or 22 referencing Refco or this litigation."</p> <p>23 Do you see that?</p> <p>24 A. Yes.</p> <p>25 Q. As you sit here today, do you believe you</p>

<p style="text-align: right;">Page 10</p> <p>1 J. LLANES 2 have such documents, e-mails, other correspondence, 3 anything reflecting such communications? 4 A. I have just -- just the declarations. 5 Q. You mean the declarations being transmitted 6 back and forth by e-mail? 7 A. Correct. No, not by e-mail -- well, the 8 final declaration is what I brought. 9 Q. Okay. 10 A. Right. 11 Q. Do you have any other e-mails or other 12 documents between you and the SEC or SEC counsel? 13 A. I'm sure I have something on my gmail 14 account, yes. 15 Q. Okay. Second, it asks for: "All notes 16 concerning communications between you and the SEC, 17 including counsel for the SEC, concerning or 18 referencing Refco or this litigation." That would 19 be, for example, if you were taking notes during a 20 telephone call, or something like that, you had with 21 counsel for the Securities and Exchange Commission. 22 Do you believe you have anything of that 23 nature? 24 A. Forgive me, I need to think about this. 25 Q. I'm not trying to put you on the spot,</p>	<p style="text-align: right;">Page 11</p> <p>1 J. LLANES 2 Mr. Llanes. I'm just trying to get a sense if you 3 have any of these categories. 4 MR. GUIDO: Objection. Speculation. 5 A. I may have something. 6 Q. Okay. With category three, it asks for: 7 "All documents and/or communications concerning or 8 referencing Refco." 9 Do you have anything like that? 10 A. I do. 11 Q. Okay. No. 4, "All documents and/or 12 communications concerning or referencing this 13 litigation," meaning the SEC versus Andreas Badian 14 litigation. 15 Do you think you have anything of that 16 nature? 17 A. Sure. I mean with respect to the 18 declarations, yes. 19 Q. Okay. No. 5 asks for: "All documents 20 and/or communications concerning or referencing 21 IPC." 22 Do you see that? 23 A. Yes. 24 Q. First of all, do you know what IPC is? 25 A. Is that the company that was -- I'll have</p>
<p style="text-align: right;">Page 12</p> <p>1 J. LLANES 2 you answer that for me. 3 Q. Okay. Well, I'll represent to you that 4 it's a telephone type service company that installed 5 some gear and service, some gear at Refco. 6 Does that ring a bell? 7 A. Okay, yes. Do I have documents that were 8 concerning that? 9 Q. Right. 10 A. Yes. 11 Q. Okay. No. 6 asks for: "All drafts of 12 declarations concerning or referencing this 13 litigation." 14 Do you have any draft declarations? 15 A. Yes. 16 Q. Okay. No. 7 asks for: "All documents 17 sufficient to show the dates of your employment at 18 Refco, the positions you held at Refco, and the 19 locations where you were assigned to work while you 20 were at Refco." 21 Do you have anything of that nature? 22 A. Yes, I should have something, yes. 23 Q. No. 8, "All documents and/or communications 24 with any former or current employee of Refco since 25 you left employment at Refco."</p>	<p style="text-align: right;">Page 13</p> <p>1 J. LLANES 2 Do you have anything of that nature? 3 A. I have e-mails. 4 Q. Okay. And No. 9 asks for: "All documents 5 and/or communications with any representative of the 6 United States Department of Justice or any division 7 or affiliate thereof." 8 Do you have anything of that nature? 9 A. I may. 10 Q. Okay. All right. In that case I would 11 just ask you and your counsel to work on that and 12 get back to me with a response. 13 MR. GUIDO: I'd like to make a relevance 14 objection to that request, and that is are you 15 restricting it to this litigation or the issues 16 in this case or, for example, it says any 17 communications with the Justice Department or 18 the state department? 19 MR. COOPERSMITH: The state department -- 20 MR. GUIDO: I'm sorry, it just says United 21 States Department of Justice. Are you 22 restricting it to this case or is it broader 23 than that? 24 MR. COOPERSMITH: I'm not going to answer 25 the question, Mr. Guido. I mean they speak for</p>

<p>1 J. LLANES 2 themselves. 3 MR. GUIDO: I just put a relevance 4 objection. 5 MR. COOPERSMITH: Do you represent the 6 witness today? 7 MR. GUIDO: No, I just put a relevance 8 objection. 9 MR. COOPERSMITH: You can make whatever 10 objections you like. 11 MR. GUIDO: Thank you. 12 BY MR. COOPERSMITH: 13 Q. Moving on, Mr. Llanes. Before the 14 deposition did you meet with anyone to prepare for 15 this session today? 16 A. I did. 17 Q. And who did you meet with? 18 A. I met with my counsel here. 19 MR. CONTI: Mike Conti. 20 A. Mike Conti. I'm sorry, Mike. 21 Q. You guys go way back? 22 A. We go way back. Mr. Guido and Mr. McHale 23 from the SEC. 24 MR. GUIDO: Who is the third name? I'm 25 sorry, I have a hearing problem.</p>	<p>Page 14</p> <p>1 J. LLANES 2 A. Mr. Guido and James McHale. 3 Q. Okay. Is that spelled M-c-H-A-L-E? 4 A. Correct. 5 Q. Okay. When did you -- well, first of all, 6 did you meet with Mr. Guido and Mr. McHale together 7 or separately? 8 A. Together. 9 Q. Always -- was there only one meeting or -- 10 A. Only one. 11 Q. Okay. And when was that meeting? 12 A. Last Wednesday. 13 Q. And from your understanding -- 14 A. Thursday or Wednesday, I'm sorry. 15 Q. So it was last week? 16 A. It was last week. 17 Q. And what was your understanding of the 18 purpose of that meeting? 19 A. Just to ensure that I have my ducks in 20 order in terms of I know what I wrote in a 21 deposition -- or I'm sorry -- in the declaration was 22 to be true. 23 Q. Okay. Prior to that meeting with 24 Mr. McHale and Mr. Guido, did you have other 25 telephone conversations with SEC lawyers, even if it</p>
<p>1 J. LLANES 2 wasn't in-person meetings? 3 A. Yes. 4 Q. And how many such telephone calls? 5 A. More than five/less than ten. 6 Q. What was the telephone call -- how long 7 before -- strike that. 8 How long before the meeting, in-person 9 meeting last week, was -- 10 MR. GUIDO: Objection. He didn't say it 11 was -- 12 MR. COOPERSMITH: If you could wait until I 13 finish my question, Mr. Guido. 14 MR. GUIDO: I'm sorry. 15 Q. Prior to the meeting that you had in person 16 with Mr. Guido and Mr. McHale last week, how long 17 before that was the last of the telephone calls? 18 MR. GUIDO: Objection. Misstates his 19 testimony. 20 A. How long before the last call or before the 21 first call -- 22 Q. In other words, how big a gap was there 23 between a telephone call you had and then the 24 meeting you had in person? 25 MR. GUIDO: Objection. Mischaracterizes</p>	<p>Page 16</p> <p>1 J. LLANES 2 the testimony. 3 A. I don't know. It was less than a week, 4 possibly. 5 Q. Okay. So prior to the in-person meeting 6 you had a telephone call with Mr. Guido and 7 Mr. McHale about a week before the in-person 8 meeting? 9 A. I'm sorry, the telephone calls -- they were 10 mainly with -- before the meeting, right, which was 11 a conference call. 12 Q. Right. 13 A. There was a telephone call with Mr. McHale. 14 Those were the calls I had, the less than ten/more 15 than five. 16 Q. So the less than ten/more than five 17 telephone calls, those were all with James McHale? 18 A. Correct. 19 Q. Had you ever spoken to Mr. Guido on the 20 telephone? 21 A. Goodness gracious. That had to have been, 22 I want to say, November of 2010 is probably the last 23 time I spoke with Mr. Guido. 24 Q. Okay. And how long in all have you spoken 25 to Mr. Guido?</p>

<p style="text-align: right;">Page 18</p> <p>1 J. LLANES 2 A. I can't recall. 3 Q. Okay. Now with regard to the meeting last 4 week, was it an in-person meeting or a telephone 5 conference call? 6 A. Conference call. 7 Q. Was anybody from the SEC physically present 8 with you during that call? 9 A. No. 10 Q. So that was -- I may have misunderstood. 11 It was a telephone conference call, not an in-person 12 meeting? 13 A. Correct. 14 Q. And that conference call was last week, and 15 Mr. Guido and Mr. McHale were both on the telephone; 16 is that correct? 17 A. Correct. 18 Q. Okay. And what -- how long did that 19 telephone conference call last? 20 A. Hour. About 60 minutes, maybe. 21 Q. Okay. And what were the subjects that were 22 discussed during that call? 23 A. Just going through the declaration in and 24 of itself. That's about it. 25 Q. Did the SEC attorneys on the telephone tell</p>	<p style="text-align: right;">Page 19</p> <p>1 J. LLANES 2 you anything about the case, or what they expected, 3 or anything of that nature? 4 A. No. 5 Q. Okay. Did the SEC attorneys during that 6 conference call that lasted around an hour last week 7 discuss with you any particular problematic areas or 8 things that you should be careful about during 9 testimony, anything of that nature? 10 A. No. No. 11 Q. Did you express any particular concerns 12 during the telephone call? 13 A. Yeah, I wanted to make sure that I was 14 recalling everything, but that was just talking out 15 loud. 16 Q. Okay. You wanted to make sure you recalled 17 accurately? 18 A. Correct. 19 Q. And did the SEC attorneys try to help you 20 with that? 21 A. Oh no, no. It was you have -- you have to 22 know what you are saying. That's -- 23 Q. Did they go over any documents with you 24 during that call? 25 A. No, just, again, the declaration was the</p>
<p style="text-align: right;">Page 20</p> <p>1 J. LLANES 2 only thing that was... 3 Q. So they did go over the prior declaration? 4 A. Correct. 5 Q. There were two declarations; is that right? 6 A. Correct. 7 Q. Can you tell me a little bit about -- 8 actually, strike that. 9 Can you just go ahead and briefly describe 10 your educational background. 11 A. I was just talking to you about this. 12 My educational background, right. I 13 graduated high school in '88, went to Milwaukee 14 School of Engineering for a year, and then had a 15 few, what was it, community colleges, College of 16 DuPage, went back to school to Loyola, then DePaul, 17 and just said forget it all. And then just 18 concentrated on work. And so now, as of -- as of 19 now I am back at school at Northwestern University, 20 SCS in the LOB program. 21 Q. Okay. Now, your career and profession has 22 been in the Information Technology area; is that 23 right? 24 A. That is correct. 25 Q. And how did you acquire the knowledge or</p>	<p style="text-align: right;">Page 21</p> <p>1 J. LLANES 2 training that you need for that type of position? 3 A. Certainly at Milwaukee School of 4 Engineering I learned about computers there, and 5 most of it was hands on. I did some programming at 6 DePaul University, and that was it. 7 Q. And where did you grow up, Mr. Llanes? 8 A. In Chicago. 9 Q. Okay. 10 A. And then in the western suburbs of Oswego, 11 Illinois. 12 Q. And so have you always lived in Chicago 13 your whole life? 14 A. Yes. 15 Q. Was there any period of time when you 16 didn't live in Chicago? 17 A. No, residence was always here in the 18 Chicagoland area. 19 Q. Okay. How old are you, Mr. Llanes? 20 A. I am 41. 21 Q. Have you ever been convicted of any 22 criminal offense? 23 A. I have not. 24 Q. Have you ever been involved in a civil 25 lawsuit where you were the defendant?</p>

1 J. LLANES
 2 A. I have not.

3 Q. Now we referenced a minute ago two
 4 declarations that you gave in your -- in this case.
 5 Do you remember that?

6 A. Correct. Yes.

7 Q. We will go over those in a minute, but can
 8 you tell me, if you know, what was the reason, as
 9 you understood it, why the SEC was asking you to
 10 give declarations? We will start with the first
 11 one, and then go to the second one.

12 A. The reason was just to provide information
 13 of my knowledge in regards to how tapes were --
 14 how -- how the voice recorder worked at Refco.

15 Q. Now, you were employed at Refco for what
 16 period of time?

17 A. '99 through 2005, and then stayed with the
 18 estate through 2007.

19 Q. And why did you leave Refco?

20 A. I didn't -- you mean the estate or Refco?

21 Q. Well, explain that. When you say estate,
 22 what are you referring to?

23 A. Well, I -- Refco went under. I think at
 24 the time it was the twelfth largest bankruptcy. And
 25 I then stayed with Refco to wind the business down,

1 J. LLANES
 2 some type of investigation?

3 A. I did not, no.

4 Q. Did you know what their role was?

5 A. At the time I was told that we were doing a
 6 standard audit, and to assist these guys as much as
 7 possible.

8 Q. And did you do that?

9 A. Absolutely.

10 Q. At any point did -- during the Refco
 11 investigation did you believe that you were under
 12 suspicion yourself for any reason at all?

13 A. No.

14 Q. Did you provide IT related information to
 15 the people doing the investigation?

16 A. Absolutely.

17 Q. Does that include the Department of Justice
 18 and the SEC or just the FTI Consulting group?

19 A. Initially it was FTI, unless FTI was
 20 requesting things for the DOJ, which I believe they
 21 were -- I'm sorry, that's speculation. But it was
 22 mainly providing information for FTI.

23 Q. Okay. Why do you believe that information
 24 provided to FTI might have been for the Department
 25 of Justice?

1 J. LLANES
 2 and then left in 2007 to come back to Chicago.

3 Q. And that winding down period was between
 4 2005 and 2007?

5 A. That is correct.

6 Q. Okay. Do you know why Refco went bankrupt?

7 A. The fraudulent accounting behavior of
 8 Mr. Phil Bennett, yes.

9 Q. Okay. Did you know anything about the
 10 fraudulent accounting behavior while you were at
 11 Refco?

12 A. Did I know what he was doing, is that the
 13 question?

14 Q. Did you know anything about it?

15 A. No, I did not.

16 Q. Were you ever contacted by any
 17 investigator?

18 A. Absolutely.

19 Q. Who were the investigators that contacted
 20 you?

21 A. Well, I was part of that initial audit in
 22 two thousand -- in October. So the first one to
 23 contact me was FTI, FTI Consulting.

24 Q. Okay. And did you understand FTI
 25 Consulting was working for a law firm that was doing

1 J. LLANES
 2 A. I did see some documents that had been

3 requested by the DOJ via FTI sometimes.

4 Q. Okay. And so you saw documents that
 5 suggested that to you?

6 A. Sure.

7 Q. Did anyone ever tell you that, though?

8 A. No.

9 Q. And did you have any direct contact with
 10 any DOJ investigators or FBI agents, anything like
 11 that?

12 A. I'm trying to think. No.

13 Q. Did the FTI consultants who were asking you
 14 for things, did they ask you for any tape recordings
 15 that were made internally at Refco?

16 A. You have to pardon me, because at the time
 17 when FTI came in, they requested a lot of just the
 18 pure data. Did they ask for the actual voice
 19 recordings? I cannot remember.

20 Q. Okay. So when you say you can't remember,
 21 it could have happened, but you can't remember, or
 22 you think it didn't happen?

23 A. It could have happened.

24 Q. Okay. Could it also be that any voice
 25 recordings that were being requested and provided

1 J. LLANES
 2 were being done by someone else other than yourself;
 3 is that possible?
 4 A. Sure. Yes.
 5 Q. Okay.
 6 A. Yes.
 7 Q. Did you -- you mentioned Mr. Bennett at
 8 Refco.
 9 Who was that?
 10 A. At the time that was our president and CEO.
 11 Q. Did you report to him?
 12 A. No.
 13 Q. At any time did you report to him?
 14 A. Do you mean answer questions or do you
 15 mean --
 16 Q. Report to him like in terms of the position
 17 you had at Refco.
 18 A. No. No.
 19 Q. Who did you report to at Refco?
 20 A. I reported to Mike Mallahan.
 21 Q. Okay. How about Santo Maggio, did you
 22 report to him at any point?
 23 A. No.
 24 Q. Okay. Going back to the declarations, when
 25 were you -- you know what, we will just go ahead and

1 J. LLANES
 2 A. No.
 3 Q. So your understanding was that you were
 4 required to do it?
 5 A. My understanding is, yes, I was.
 6 Q. Okay. Now, there are a number of
 7 attachments to the declaration.
 8 Can you tell us generally what those are?
 9 A. Voice recorder tapes from the NiceLog
 10 system.
 11 Q. Okay. Now, who actually drafted the text
 12 of the declaration?
 13 A. I want to say that that was the SEC that
 14 drafted that for me.
 15 Q. Would that be Mr. McHale?
 16 A. Mr. McHale, and then, of course, I had
 17 input.
 18 Q. Okay. So when you gave input, do you
 19 recall making any particular changes to what the SEC
 20 had drafted when you first saw it?
 21 A. The first draft, what do I recall? I
 22 recall the date of my start. I recall -- I want to
 23 say the date when I -- I think in statement 7, "In
 24 or about 2003," I believe it said 2001. But that's
 25 what I -- that's all I recall.

1 J. LLANES
 2 make this an exhibit.
 3 MR. COOPERSMITH: Make this Llanes
 4 Exhibit 2.
 5 (Llanes Exhibit 2 marked for
 6 identification.)
 7 Q. Mr. Llanes, do you recognize that as a
 8 declaration that you signed on December 28th,
 9 2007, in connection with this case?
 10 A. I do recognize this, yes.
 11 Q. Can you recall who asked you to put
 12 together this declaration?
 13 A. It was Mr. McHale.
 14 Q. Did McHale ever tell you the reason at the
 15 time why they needed this declaration from you?
 16 A. No.
 17 Q. And did you have a choice as to whether to
 18 do it or not or were you, in your view, required to
 19 make the declaration?
 20 A. I would say in my view, since I was the
 21 only IT guy left -- well, I'm sorry. Since myself
 22 and a couple other folks were the only ones left, I
 23 felt it my obligation to do it.
 24 Q. Okay. But did anyone tell you that you
 25 were required to do it?

1 J. LLANES
 2 Q. Okay. So it sounds like you must have seen
 3 a draft of the declaration before it was finalized;
 4 is that a correct statement?
 5 A. Yes.
 6 Q. And how was that transmitted to you, that
 7 draft?
 8 A. I believe that was FedEx.
 9 Q. Okay. Do you still have a copy of the
 10 draft that you got by FedEx?
 11 A. I might.
 12 MR. COOPERSMITH: Okay. Counsel, we ask
 13 that you look for that in the course of looking
 14 for documents under the subpoena.
 15 Q. Did any other changes or areas where you
 16 gave input stand out in your mind, Mr. Llanes?
 17 A. Certainly there was a correction to the
 18 declaration after this, which is why No. 8 was
 19 changed.
 20 Q. And that was -- the correction was made in
 21 a second declaration?
 22 A. Correct.
 23 Q. Okay. We will get to that. Thanks.
 24 Anything else?
 25 A. I cannot recall.

1 J. LLANES

2 Q. Okay. Let's take a look at the actual text
 3 of Exhibit 2. It starts out in paragraph 1 reading:
 4 "From on or about January 1st, 1999, to on or
 5 about June 30th, 2007, Refco Securities employed
 6 me in its Information Technology Operations (IT)
 7 department."

8 And is that a correct statement of the
 9 period of time that you worked for Refco,
 10 Mr. Llanes?

11 A. That is correct.

12 Q. And it was a two-year period towards the
 13 end there, from '05 to '07, where you were actually
 14 working for the estate rather than Refco itself; is
 15 that right?

16 A. That is correct.

17 Q. And then it says that -- in paragraph 1:
 18 "From on or about June 1st, 2003, to the on or
 19 about June 30th, 2007, I served as the head of
 20 that department."

21 Do you see that?

22 A. Yes.

23 Q. So is that a correct statement of the
 24 period of time that you were head of the IT
 25 department at Refco?

1 J. LLANES

2 A. Right. It was the head of that department,
 3 that particular department in New York, yes.

4 Q. I'm sorry?

5 A. Yes. The answer is yes, but the head of IT
 6 in New York, yes.

7 Q. So you were head of IT in New York between
 8 June 1st, 2003, to June 30, 2007?

9 A. That is correct.

10 Q. Were you living in New York?

11 A. I was living in New York, yes.

12 Q. Okay. Between what period --

13 A. I'm sorry, Hoboken, yes.

14 Q. Okay. New Jersey?

15 A. Yes.

16 Q. You were living in New York for what period
 17 of time?

18 A. Between 2003 and -- when did we move --
 19 2006.

20 Q. Okay. So when I asked you before about
 21 living in Chicago the whole time --

22 A. Oh, I'm sorry.

23 Q. And I'm not trying to trick you. I just
 24 want to make sure I understand.

25 A. Yes. Yes. I'm sorry.

1 J. LLANES

2 Q. So there was a period of time where you
 3 didn't live in Chicago, you lived in New York?

4 A. That is correct.

5 Q. Okay. And that coincided with your
 6 promotion to being the head of the IT department at
 7 Refco?

8 A. That is correct.

9 Q. Okay. And that was just -- give me the
 10 dates again that you were living in New York working
 11 for Refco?

12 A. That is correct.

13 Q. What are the dates?

14 A. June of 2003 through, I want to say, June
 15 of 2006.

16 Q. Okay.

17 A. My apologies. The question, when you were
 18 asking me those questions before, I was -- I was
 19 just thinking still, I guess, in my 20s.

20 Q. Okay.

21 A. When you were going through my timeline of
 22 my education.

23 Q. I'm just trying to understand what
 24 happened.

25 So there was a period of time between June

1 J. LLANES

2 '03 and some period -- sometime in '06 that you were
 3 living in New York?

4 A. Correct.

5 Q. And during that time you were also the head
 6 of the IT department at Refco?

7 A. That is correct.

8 Q. Okay. But before June 2003 you were living
 9 in Chicago?

10 A. That is correct.

11 Q. Is that right?

12 A. Yes. In Evanston, yes.

13 Q. What was your position at Refco before you
 14 were promoted to IT director?

15 A. I was head of the networking team.

16 Q. What's the networking team?

17 A. It's the -- it's a subgroup of the
 18 infrastructure team that was out here in Chicago.

19 Q. And what were your duties as the part of
 20 the networking team?

21 A. Oversaw the network connectivity of the IT
 22 operations and infrastructure in the Chicago office.

23 Q. Okay. And when you became director of IT,
 24 am I correct that you would have been overall
 25 responsible for all IT operations at Refco?

1 J. LLANES
 2 A. All of IT operations in New York.
 3 Q. In New York?
 4 A. Yes, that is correct.
 5 Q. Was there a separate director of IT in
 6 Chicago while you were serving in New York?
 7 A. Yes.
 8 Q. Okay. Why did they make you director in
 9 New York rather than Chicago?
 10 A. There was an opening.
 11 Q. Okay. While you were at the networking
 12 team in Chicago prior to 2003, who was responsible
 13 for working on the NiceLog phone systems?
 14 A. Where? Which location?
 15 Q. In New York.
 16 A. In New York? I know it to be Gregg Blauth.
 17 Q. But that was not you; am I correct?
 18 A. It was not me.
 19 Q. Who was in charge of the NiceLog phone
 20 recording system in Chicago?
 21 A. John Beatty.
 22 Q. That's B-e-a-t-t-y?
 23 A. B-e-a-t-t-y.
 24 Q. Okay. Did you report to Mr. Beatty, or was
 25 he sort of a separate track from your job?

1 J. LLANES
 2 A. Oh absolutely.
 3 Q. So what happened?
 4 A. They wanted to shift everything out to --
 5 to London.
 6 Q. Are you aware of more recent events
 7 regarding MF Global?
 8 A. Oh yes.
 9 Q. Are you involved in any litigation, or
 10 anything like that, with regard to MF Global?
 11 A. I am not.
 12 Q. Did any investigators ever contact you
 13 about MF Global?
 14 A. No.
 15 Q. Do you expect that anyone will contact you?
 16 A. I do not expect that.
 17 Q. Has anyone ever asked you to preserve
 18 documents that you might have with regard to MF
 19 Global?
 20 A. No.
 21 Q. Now let's take a look at paragraph 3 of the
 22 same declaration, it's Exhibit 2. The first
 23 sentence reads: "Refco recorded the conversations
 24 of its registered representatives, including their
 25 telephone conversations with those with whom they

1 J. LLANES
 2 A. He was a separate track. I did not report
 3 to John Beatty.
 4 Q. Okay. Now, in paragraph 1 of the
 5 declaration, going back to Exhibit 2 here,
 6 Mr. Llanes, the last sentence says, "MF Global
 7 Securities in Chicago presently employs" -- and
 8 should that be a "me" there?
 9 A. There should be a "me" there.
 10 Q. So it should read: MF Global Securities in
 11 Chicago presently employs me in its IT department;
 12 is that right.
 13 A. At that time, yes.
 14 Q. So as of December 28th, '07, you were
 15 working for MF Global in Chicago; is that right?
 16 A. I was.
 17 Q. And are you still working for MF Global?
 18 A. I am not.
 19 Q. When did you leave employment at MF Global?
 20 A. November -- I want to say November 15,
 21 2010.
 22 Q. Why did you leave MF Global in
 23 November 2010?
 24 A. There was a restructure. They let me go.
 25 Q. Didn't they still need IT?

1 J. LLANES
 2 discussed securities transactions and other
 3 matters."
 4 Do you see that?
 5 A. Yes.
 6 Q. Then it goes on, "Refco made these
 7 recordings by using a 'NiceLog' voice logger
 8 system."
 9 Do you see that?
 10 A. Yes.
 11 Q. Then it reads: "That system recorded all
 12 conversations that took place on other near the
 13 telephones used on Refco's trading desk."
 14 Do you see that?
 15 A. Yes.
 16 Q. And then it reads: "Refco stored these
 17 recordings on Sony DD2 and Sony DD3 disks."
 18 Do you see that?
 19 A. Yes.
 20 Q. Now the attachments to the declaration, are
 21 those copies of these Sony DD2 and DD3 disks?
 22 A. They are.
 23 Q. What is that exactly, what sort of media?
 24 Is that a disk?
 25 A. No, they are tapes. They are magnetic --

1 J. LLANES
 2 magnetic recording tapes.
 3 Q. Okay. Are they disks or tapes?
 4 A. Tapes.
 5 Q. Okay. Any idea why it says they are disks?
 6 A. No.
 7 Q. What is a Sony DD2 and Sony DD3 disk?
 8 A. I don't know.
 9 Q. Is that like some sort of digital storage,
 10 in your view, as an IT person?
 11 A. It could be. It could be.
 12 Q. So if I understand this correctly, the
 13 attachments to the declaration are copies of the
 14 labels of magnetic tapes?
 15 A. Correct.
 16 Q. But they are not copies Sony DD2 and DD3
 17 disks; correct?
 18 A. They are not -- these -- these copies are
 19 of magnetic Sony tapes.
 20 Q. How do you know they are Sony?
 21 A. Because I can see they are Sony right here.
 22 Q. Because you can see the Sony, okay.
 23 But are they Sony DD2 and DD3 disks?
 24 A. They are not disks. They are tapes.
 25 Q. Okay. So if you go to paragraph 4 of the

1 J. LLANES
 2 declaration, when it says: "I have attached to this
 3 declaration the labels from the Sony DD2 and DD3
 4 disks" --
 5 A. Right.
 6 Q. -- "as Exhibits I through IV." And then it
 7 says: "Those labels are true and correct copies of
 8 the labels on the disks that store the
 9 above-referenced Refco recordings."
 10 Do you see that?
 11 A. Yes.
 12 Q. So that's not accurately; is that right?
 13 A. Correct. They should say tapes.
 14 Q. Now going back to paragraph 3. Now, in
 15 2001, Mr. Llanes, did you have direct responsibility
 16 for operating or maintaining the NiceLog voice
 17 logger system?
 18 A. No. In 2001 you asked? No.
 19 Q. And do you understand that the NiceLog
 20 voice logger system has different settings that you
 21 could use depending on what you wanted to record,
 22 and so forth?
 23 A. In terms of?
 24 Q. Well, so I'm trying to understand this
 25 sentence that reads in paragraph 3 of Exhibit 2,

1 J. LLANES
 2 "That system recorded all conversations that took
 3 place on or near the telephones used on Refco's
 4 trading desk."
 5 Do you see that?
 6 A. Yes.
 7 Q. Are you aware that it's possible to set the
 8 NiceLog system to record only selective
 9 conversations rather than all conversations?
 10 A. I am aware there were two types of phone
 11 lines that were recorded.
 12 Q. What were the two types of phone lines?
 13 A. So you had the regular phone lines where
 14 you just picked up a call, or picked up a line and
 15 started dialing, and the voice logger system would
 16 actually start -- start recording.
 17 And then we had things called ARDs, which
 18 is automatic ring downs. It's ring downs straight
 19 to the floors, where those are all -- you know, if
 20 the phone was just picked up, any time the phone was
 21 off the hook, the recording was taking place.
 22 Q. Okay. Do you know, by the way, whether
 23 people who were calling and, in fact, conversations
 24 being recorded were told that their conversations
 25 were being recorded?

1 J. LLANES
 2 A. I do not know this.
 3 Q. Have you ever looked at the manual for the
 4 NiceLog system?
 5 A. I have not.
 6 Q. Are you aware that the NiceLog system has a
 7 feature that allows for selective recording of
 8 conversations?
 9 A. I do not.
 10 MR. COOPERSMITH: I would like to mark as
 11 Exhibit 3 this NiceLog Administrator's Manual.
 12 (Llanes Exhibit 3 marked for
 13 identification.)
 14 MR. GUIDO: Can I put some objections on
 15 the record before you start?
 16 MR. COOPERSMITH: Do you have an objection
 17 to a particular question or --
 18 MR. GUIDO: Yeah, to the document.
 19 MR. COOPERSMITH: Okay.
 20 MR. GUIDO: I object to the foundation, and
 21 I also object to the relevance. The relevance
 22 is the manual is dated July 2004 and to this
 23 date the document has not been authenticated in
 24 this case.
 25 MR. COOPERSMITH: Okay. Duly noted.

1 J. LLANES
 2 BY MR. COOPERSMITH:
 3 Q. Mr. Llanes, did you ever see this document
 4 before, this manual?
 5 A. I had no reason to look through the
 6 document.
 7 Q. Okay. Are you aware of any versions of the
 8 NICE Administrator's Manual prior to July 2004?
 9 A. No.
 10 Q. Are you aware whether the NiceLog system
 11 had different features in 2001 compared to July of
 12 2004?
 13 A. No.
 14 Q. If you take a look at the -- if you take a
 15 look -- well, let me make this easy for you. If you
 16 look at the very lower left, do you see there is a
 17 number in the very bottom left? And I'll represent
 18 to you that for the deposition I've placed these
 19 numbers on exhibits so that we could reference
 20 things and be on the same page.
 21 A. Okay.
 22 Q. So I'm looking at page 8, looking at the
 23 lower left of the document.
 24 A. Okay.
 25 Q. Do you see it has a chapter --

1 J. LLANES
 2 A. Okay.
 3 Q. And then it says under that, "You can
 4 define a recording program that will not record
 5 selected calls. This is Negative Recording
 6 Program."
 7 Do you see that?
 8 A. Yes.
 9 Q. Are you familiar with that feature of the
 10 NiceLog system?
 11 A. I am not familiar.
 12 Q. As you sit here today, can you tell me
 13 whether or not the recording system in New York in
 14 2001 was making use of any of these features?
 15 A. I cannot.
 16 Q. Can you tell me anything about the settings
 17 of the NiceLog system in New York in 2001?
 18 A. I cannot.
 19 Q. Did you have any responsibility for how
 20 those settings were adjusted in 2001?
 21 A. I did not.
 22 Q. Can you tell me whether in 2001, in fact,
 23 they were recording every phone conversation from
 24 the trading desk at Refco?
 25 A. I cannot.

1 J. LLANES
 2 A. Okay.
 3 Q. Page 8, are you there?
 4 A. Page 8 in the lower right.
 5 Q. Oh, okay. Page 8 on the lower right on
 6 this particular exhibit. My apologies.
 7 A. Okay.
 8 Q. Do you see there is a chapter called
 9 Chapter 5?
 10 A. Yes.
 11 Q. And it is called Setting Up Selective
 12 Recording.
 13 Do you see that?
 14 A. Yes.
 15 Q. And if you look at page 143 of the same
 16 document, Exhibit 3.
 17 A. Okay.
 18 Q. Can you see that that's the chapter that's
 19 headed Setting Up Selective Recording?
 20 A. Yes.
 21 Q. And then if you go to page 155 of the same
 22 document.
 23 A. Okay.
 24 Q. Do you see that that has a heading called
 25 Recording Programs that Prevent Recording?

1 J. LLANES
 2 Q. Let's go to paragraph 5 of the declaration.
 3 I'm sorry, I'm skipping to -- I didn't mean
 4 paragraph 5.
 5 Let's take a look at paragraph 7. That
 6 reads: "In or about July 2003 I was the custodian
 7 of the above-referenced recordings."
 8 Do you see that?
 9 A. Yes.
 10 Q. Okay. So prior to that you were not the
 11 custodian; is that a fair statement?
 12 A. That is correct.
 13 Q. Now, the next paragraph 8, it reads: "At
 14 that time, following the instructions from Refco's
 15 outside counsel, Mayer Brown Rowe & Maw, I directed
 16 Refco personnel to assemble all of their original
 17 tape recordings described above in Exhibits I
 18 through IV and to pack them for shipment."
 19 Do you see that?
 20 A. I did. I do.
 21 Q. Who were the Refco personnel that you are
 22 referring to in that particular sentence?
 23 A. So we are going to go -- we are going to
 24 touch base on that -- there was a correction to that
 25 statement.

1 J. LLANES

2 Q. I promise.

3 A. All right. So just to make sure.

4 I have to recall. Sorry. So in 2003, when
5 I came in, they were in the middle of a huge
6 litigation request, the IT team was. So as I took
7 over, there were three -- there were three
8 consultants that we had hired, short-term
9 consultants, to just continually to pull tapes, or
10 pull -- I'm sorry -- get the tape recordings, and
11 then copy them to disks.

12 Who were those three individuals? Because
13 they were temp employees, I cannot tell you their
14 names. Do I have that information with me? I do
15 not.

16 Q. Okay. So prior to July 2003 there were
17 people involved with this law firm, Mayer Brown,
18 working on these recordings, but you weren't
19 involved with that; is that right?

20 A. I got involved when I took over.

21 Q. In July 2003?

22 A. Correct.

23 Q. But prior to that there were other people
24 dealing with that?

25 A. Correct.

1 J. LLANES

2 Q. And as you sit here today, you can't
3 remember who those people were?

4 A. I apologize.

5 Q. Were you working with them at the time?

6 A. Then I did work with them. Right. I did
7 direct them and say, okay, all these tapes -- I'm
8 sorry -- all these voice recordings you guys are
9 taking, you have to bring them onto disks, right.
10 We were coordinating that.

11 Q. And your work with that started in
12 approximately July 2003?

13 A. Correct.

14 Q. Do you know what particular day, date,
15 exactly, or can you be more specific than July 2003?

16 A. Probably the beginning; so maybe
17 July 1st, but...

18 Q. And then the next sentence here reads: "At
19 my further direction, these Refco personnel
20 delivered these tape recordings to Mayer Brown Rowe
21 & Maw's New York office for production to the
22 Securities and Exchange Commission pursuant to its
23 request."

24 Do you see that?

25 A. Yes.

1 J. LLANES

2 Q. Now, I understand you say there is a later
3 declaration that corrects that; right?

4 A. Yes.

5 Q. And the correction -- why don't you
6 describe to me what the correction is?

7 A. The correction is that, from what I recall,
8 is that there were a set of tapes -- so hang on.

9 So we did burn disks for Mayer Brown. We
10 shipped those over. And then what was requested
11 were the specific tapes that we used to burn -- that
12 we used to pull this information, the voice
13 recorders -- the voice recordings of the requested
14 custodians.

15 Does that make sense? Do you understand --
16 do you follow me?

17 Q. Let me read the answer here, and I'll tell
18 you in a minute.

19 Okay. Mr. Llanes, my understanding is
20 that -- let's just get the other declaration out.
21 That might be easier.

22 MR. COOPERSMITH: Let's mark this as
23 Exhibit 4.

24 (Llanes Exhibit 4 marked for
25 identification.)

1 J. LLANES

2 Q. Okay. Now, Exhibit 4 is a collection of
3 documents that starts with a Second Declaration of
4 Kenneth Guido on the first page.

5 Do you see that?

6 A. Yes.

7 Q. If you look at the last three pages, and
8 this one actually really does have numbers on the
9 very lower left-hand corner.

10 Do you see that?

11 A. Yes.

12 Q. So I'm actually looking at page 29, using
13 the lower left-hand number of Exhibit 4.

14 A. Okay.

15 Q. Is that your supplemental declaration --

16 A. That is.

17 Q. -- that you gave in this case?

18 A. Yes.

19 Q. Am I correct that the correction to the
20 initial declaration is in paragraph 8, which appears
21 on page 31 of this Exhibit 4?

22 A. Yes.

23 Q. And that reads: "Paragraph 8 of my
24 December 2007 declaration stated that in July 2003 I
25 directed Refco employees in New York to assemble and

1 J. LLANES
 2 deliver all of the original tape recordings listed
 3 in the exhibits to my declaration for production via
 4 Refco's counsel to the Securities and Exchange
 5 Commission. That paragraph should have stated that
 6 I directed Refco personnel to assemble and deliver
 7 all original tape recordings sought by the SEC that
 8 had not already been produced. I now believe that
 9 certain such recordings may have been produced
 10 earlier."

11 Do you see that?

12 A. Yes.

13 Q. Is that an accurate statement as to what
 14 the actual facts were?

15 A. Yes.

16 Q. Okay. Going back to the initial
 17 declaration, can you explain why there was that
 18 error in the first declaration?

19 A. Misunderstanding.

20 Q. Between who?

21 A. Just me. I'm not accustomed to looking at
 22 these type of documents.

23 Q. So is it a fair statement that the SEC
 24 attorney who drafted the initial declaration, based
 25 on conversations with you, just got it a little bit

1 J. LLANES
 2 wrong in terms of what occurred?
 3 A. Yeah, I should have looked at it better.
 4 Q. So that was an area where you should have
 5 given input, but back in 2007 you just didn't do
 6 that; is that fair?
 7 A. That's fair.
 8 Q. In the supplemental declaration, which is
 9 Exhibit 4, when you say, "I now believe that certain
 10 such recordings may have been produced earlier," can
 11 you tell me which ones were produced earlier and
 12 which ones were produced by you?
 13 A. Right. So I don't know which ones were
 14 produced earlier. All I know is that we did produce
 15 a set of tapes earlier.
 16 Q. When you say "we", you mean people at
 17 Refco?
 18 A. Correct.
 19 Q. Okay.
 20 A. Myself and my team.
 21 Q. Okay.
 22 A. The remainder of the tapes that I mentioned
 23 in this -- in Exhibit 4, right, is this Exhibit 4,
 24 in the remainder of the tapes that I speak of that
 25 was sent, that was during the time of the estate,

1 J. LLANES
 2 when we were winding down the estate, when I was
 3 told to take the rest of the tapes and ship them
 4 off.

5 Q. So the wind down of the estate, I believe,
 6 you said was between 2005 and 2007?

7 A. Correct.

8 Q. And this paragraph of Exhibit 4, your
 9 supplemental declaration, paragraph 8, talks about
 10 events in 2003.

11 A. Right. See.

12 Q. So I'm a little confused why you say this
 13 had to do with during the time of the wind down of
 14 the estate.

15 A. Right. I knew you were going to get that.
 16 So, again, that's just me not understanding.

17 Q. What's not you understanding?

18 A. It's me not understanding what this part
 19 said.

20 Q. When you are referring to "this part" --
 21 I'm sorry, we have a record.

22 A. I'm sorry. I'm sorry. Yes. On Exhibit 2,
 23 statement 8, right.

24 Q. Okay.

25 A. When that first declaration came out,

1 J. LLANES
 2 right, I'll be honest with you, I was under the
 3 impression that -- not knowing what all these cases
 4 are all about, and there are so many cases that are
 5 flying around, what have you, so my understanding
 6 is, to me, tapes are tapes, right. People were
 7 asking for tapes. People were asking for
 8 information. I'm just going to give it to whomever
 9 it is. Whether it's for this case or for that case,
 10 I couldn't even tell you who it was for.

11 So all -- in the understanding when this
 12 came out, right, when this particular declaration
 13 came out, and far be it from me to actually see that
 14 it was for Andreas Badian versus the SEC, what have
 15 you, all I know is tapes, right, they asked me about
 16 these tapes, here is what the tapes did for me, and
 17 now I'm providing you that, yes, these tapes were
 18 given to Mayer Brown, boom, done.

19 And then I had a second look at it saying,
 20 whoa, hang on a second, this is incorrect. Then in
 21 Exhibit 4 here, page 31, that that's why there was
 22 the correction.

23 So, again, under the understanding that I
 24 don't know anything in specific of which case is
 25 what, all I'm saying is I provided tapes to Mayer

1 J. LLANES

2 Brown, you know, or the SEC for that matter. That
 3 these are the tapes that were given, and all I know
 4 is as a whole that I provided -- we provided the
 5 tapes -- the remainder of the tapes, right.

6 Q. Okay.

7 A. Does that make sense? I don't know what's
 8 going on, and what case is what.

9 Q. I think I understand what you are saying.

10 The question I have for you, though, for
 11 the moment is: How did the mistake in the
 12 declaration between the first declaration and the
 13 second declaration come to your attention?

14 A. Just reading it again.

15 Q. So how did you happen to be reading the
 16 declaration again?

17 A. I was winding down. When did this come
 18 out? This was the whole -- I believe McHale
 19 probably asked me to take a second look at it, and
 20 said read it again, just to make sure that I was
 21 okay with everything.

22 Q. Okay. So at Mr. McHale's direction you
 23 reviewed the initial declaration that you gave in
 24 this case?

25 A. Yes.

1 J. LLANES

2 Q. And in the course of reviewing that, you
 3 noticed that there was an error?

4 A. Correct.

5 Q. And that was in paragraph 8 of both the
 6 initial and the corrected in paragraph 8 --

7 A. Correct. And, actually, there was one
 8 more -- the date when I started in 2000, or
 9 something like that. What is it, January 2000.
 10 What was it in the earlier one? It says January 1,
 11 1999. Here in Exhibit 4 is December -- I'm sorry --
 12 January 2000.

13 Q. So actually you started at Refco in
 14 January 2000 rather than January 1999?

15 A. Right. It was almost '99, because I -- I
 16 technically started in December of '99, but that was
 17 just the actual -- my start date.

18 Q. So that was another error that you
 19 corrected in the second declaration?

20 A. Right.

21 Q. Okay.

22 A. I'm sorry. I physically started in '99,
 23 but I technically started in 2000.

24 Q. Okay. But as you sit here, again, can you
 25 tell us which recordings had already been provided

1 J. LLANES

2 to Mayer Brown and which ones you provided?

3 A. So I can tell you that within these tapes
 4 that you have given -- within Exhibit 2, right, that
 5 you have given here, and the internal exhibits on
 6 Exhibit 2, I cannot tell you which ones specifically
 7 we gave to Mayer Brown during the 2003 litigation
 8 request.

9 Q. Okay. Am I correct that once you gave
 10 anything to Mayer Brown, that was the end of it in
 11 terms of your knowledge of what happened; is that
 12 right?

13 A. Yes, that's correct.

14 Q. So you had no further involvement with the
 15 tapes or any aspect of the tapes once you gave them
 16 to Mayer Brown?

17 A. That is correct.

18 Q. Okay. As to what they produced to the SEC,
 19 or what they did with them, you just couldn't say;
 20 is that right?

21 A. I cannot say.

22 Q. Okay. With regard to Mayer Brown, I want
 23 to show you an exhibit I'm going to mark as No. 5.

24 (Llanes Exhibit 5 marked for
 25 identification.)

1 J. LLANES

2 MR. GUIDO: I'd like to put on an
 3 objection, foundation objection and a relevance
 4 objection. Go ahead.

5 BY MR. COOPERSMITH:

6 Q. First of all, Mr. Llanes, have you ever
 7 seen Exhibit 5, this letter from John Hewitt to
 8 Christopher Ehrman?

9 A. I have not.

10 Q. And do you see it's dated May 30th, 2003?

11 A. I do.

12 Q. Do you know John Hewitt?

13 A. I do not.

14 Q. Who were the people at Mayer Brown that you
 15 were working with?

16 A. Lisa Dunskey. She had a counterpart in New
 17 York that I cannot recall. No, I don't know.

18 Q. Now, am I correct, Mr. Llanes, that the
 19 date of the letter being May 20th -- I'm sorry --
 20 May 30th, 2003, that your involvement in providing
 21 recordings to Mayer Brown all occurred after the
 22 date of this letter?

23 A. That is correct.

24 Q. If you take a look -- and, again, I have
 25 some page numbers on the very lower left, bottom

<p style="text-align: right;">Page 58</p> <p>1 J. LLANES 2 left. 3 A. Yes. 4 Q. So I want to start with paragraph -- I'm 5 sorry -- page 5. And there is a paragraph near the 6 top that starts with the words "counsel after 7 appropriate inquiry". 8 Do you see that? 9 A. Yes. 10 Q. And the very last sentence of that 11 paragraph, or last two sentences, read as follows: 12 "By agreement with the Staff in late January 2003, 13 Refco reviewed all relevant telephone tapes and 14 extracted from them the conversations on Graham's 15 telephone lines. These were then placed on CDs 16 which were provided to the Staff." 17 Do you see that? 18 A. Yes. 19 Q. Am I correct that you had nothing to do 20 with that process of extracting conversations from 21 Graham's telephone lines? 22 A. If it was prior to 2000 -- I'm sorry. If 23 it was prior to June -- late June 2003, I was not 24 part of this. 25 Q. Can you tell me what the methodology was</p>	<p style="text-align: right;">Page 59</p> <p>1 J. LLANES 2 for extracting conversations from Graham's telephone 3 lines was? 4 A. From Graham's telephone line or from 5 telephone lines in general? 6 Q. Can you tell me anything about what 7 Mr. Hewitt is referring to, what the process was, 8 what the methodology was for extracting 9 conversations from Graham's telephone lines, as 10 referenced in this letter? 11 A. I cannot. 12 Q. Can you tell me anything about whether 13 complete conversations from Graham's telephone lines 14 were placed on CDs and provided to the SEC staff? 15 A. I can tell you there were some 16 conversations burned under my direction, again, 17 after 2003 of June. 18 Q. Okay. Looking at the next paragraph of the 19 letter, which is Exhibit 5, do you see there is an 20 indented paragraph that starts with the words "all 21 recording sessions are an average of"?</p> <p>22 A. Correct. Yes. 23 Q. And, then, in the middle there is a 24 sentence that reads: "After the voice recordings 25 have been restored, we used the query process on the</p>
<p style="text-align: right;">Page 60</p> <p>1 J. LLANES 2 software to retrieve the recordings." 3 Do you see that? 4 A. Yes. 5 Q. Can you tell me anything about how this 6 query process was utilized to retrieve recordings? 7 A. You want me to speak prior, again, to 8 June 2003? 9 Q. Let me try to be more specific. 10 This letter says that the IT department 11 provided the following explanation on 12 February 6th. 13 Do you see that? 14 A. Yes. 15 Q. And that the explanation provided by 16 Refco's IT department was, in this sentence, "After 17 the voice recordings have been restored, we used the 18 query process on the software to retrieve the 19 recordings." 20 Do you see that? 21 A. Yes. 22 Q. So I'm asking you in this matter do you 23 have any knowledge of how the IT department went 24 about retrieving recordings using a query process? 25 A. I know, again, after June of 2003 -- I'm</p>	<p style="text-align: right;">Page 61</p> <p>1 J. LLANES 2 trying to recall how the query process worked. Can 3 I just walk through? 4 Q. Go ahead. 5 A. Okay. So they would locate the location of 6 the phone in question; get the tape; put the tape 7 into the machine; use the NiceLog system to locate 8 the time and date of request -- requested, and, of 9 course, the location; take all that information, 10 restore it; so you have to restore it onto the Nice 11 logger system, which is a spinning disk. It only 12 held so much, that's why it took a long time. 13 And, then, the guys would take that 14 information, burn it into a WAV file, right. 15 NiceLogger had a way to take the information and put 16 it into a WAV file. And then -- and then the guys 17 would -- the guys, meaning the consultants, they 18 would then take that information and burn it onto a 19 disk. 20 Q. Okay. 21 A. Now, the query system you are asking about, 22 I cannot speak to it. All I know is we were able to 23 identify a location and phone and, of course, the 24 particular phone line being used, because they had 25 multiple -- traders had multiple phone lines.</p>

<p>1 J. LLANES</p> <p>2 So in terms of query system, quote unquote,</p> <p>3 query system, that was just here is where person X</p> <p>4 was sitting. They had phone lines one, two, three.</p> <p>5 And then you just had to cross reference where they</p> <p>6 were sitting in the NiceLog system.</p> <p>7 Q. When this particular work that's referenced</p> <p>8 in Exhibit 5 was done by the IT department, as</p> <p>9 described in Mr. Hewitt's letter, you had no</p> <p>10 involvement in that?</p> <p>11 A. I had no involvement in that.</p> <p>12 MR. GUIDO: Can we take a break at this</p> <p>13 point?</p> <p>14 MR. COOPERSMITH: Are you ready for a</p> <p>15 break?</p> <p>16 THE WITNESS: Yeah, it doesn't matter.</p> <p>17 MR. COOPERSMITH: Yeah, we can take a</p> <p>18 break.</p> <p>19 (Recess taken from 1:56 P.M. to</p> <p>20 2:02 P.M.)</p> <p>21 BY MR. COOPERSMITH:</p> <p>22 Q. Mr. Llanes, first of all, during the break</p> <p>23 did you have any conversations with Mr. Guido?</p> <p>24 A. No.</p> <p>25 Q. I want to continue asking some questions</p>	<p>1 J. LLANES</p> <p>2 about Exhibit 5, which is this letter from</p> <p>3 Mr. Hewitt to Mr. Ehrman dated May 30, 2003.</p> <p>4 A. Okay.</p> <p>5 Q. Do you have that in front of you?</p> <p>6 A. Yes.</p> <p>7 Q. Can you take a look at page 6, going,</p> <p>8 again, by those lower left-hand, bottom left-hand</p> <p>9 corner page numbers.</p> <p>10 A. Okay.</p> <p>11 Q. Are you there?</p> <p>12 A. Yes.</p> <p>13 Q. Okay. Do you see the second-to-last</p> <p>14 paragraph that starts with the word "unfortunately"?</p> <p>15 A. Yes.</p> <p>16 Q. Looking at the second sentence of that</p> <p>17 paragraph, it reads: "Counsel then sought and</p> <p>18 secured an agreement with the Staff under which</p> <p>19 Refco would extract relevant segments from the tapes</p> <p>20 which had not yet been reviewed pursuant to the</p> <p>21 original agreement and on a rolling basis provide</p> <p>22 the original tapes to the Staff."</p> <p>23 Do you see that?</p> <p>24 A. Yes.</p> <p>25 Q. And then it says: "Those original tapes</p>
<p>1 J. LLANES</p> <p>2 that had already been copied would be sent</p> <p>3 immediately to the Staff."</p> <p>4 Do you see that?</p> <p>5 A. Yes.</p> <p>6 Q. And then the last sentence in that</p> <p>7 paragraph reads: "Pursuant to this agreement, 29 of</p> <p>8 the 70 requested tapes were sent to the Staff on</p> <p>9 April 29th, 2003, and this production is</p> <p>10 continuing."</p> <p>11 Do you see that?</p> <p>12 A. Yes.</p> <p>13 Q. So, again, am I correct that all of that</p> <p>14 activity described in that paragraph was occurring</p> <p>15 before you got involved with this project?</p> <p>16 MR. GUIDO: Objection. There is no</p> <p>17 evidence in the record or in this deposition</p> <p>18 that any of this occurred.</p> <p>19 A. If this occurred, I didn't do anything.</p> <p>20 Q. You had no involvement?</p> <p>21 A. I had no involvement.</p> <p>22 Q. If it occurred?</p> <p>23 A. Correct.</p> <p>24 Q. By the way, do you have any idea why, if</p> <p>25 you look at the previous page, on page 5,</p>	<p>1 J. LLANES</p> <p>2 second-to-last paragraph, it reads: "Refco, by</p> <p>3 April 25th, 2003, had produced the relevant</p> <p>4 conversations on 29 of the 70 tapes containing these</p> <p>5 conversations," but on page 6 it references</p> <p>6 April 29th, 2003, rather than April 25th, 2003?</p> <p>7 Do you have any idea why that is?</p> <p>8 A. No.</p> <p>9 Q. Do you have knowledge of what this letter</p> <p>10 is referring to when it talks about on page 6 an</p> <p>11 extraction of relevant segments from the tapes?</p> <p>12 A. No.</p> <p>13 Q. Let's go back to your supplemental</p> <p>14 declaration, which I believe was Exhibit 4. Just to</p> <p>15 be clear --</p> <p>16 MR. GUIDO: Is that page 29 of 31?</p> <p>17 Q. Exhibit 4 is actually a collection of</p> <p>18 documents under a declaration of Mr. Guido. And we</p> <p>19 are looking in particular at numbered pages 29</p> <p>20 through 31, lower left-hand bottom.</p> <p>21 A. Okay.</p> <p>22 Q. Are you there?</p> <p>23 A. Yes.</p> <p>24 Q. I want to just start by asking you about</p> <p>25 paragraph 7, which is on page 31, using that same</p>

1 J. LLANES
 2 numbering system.
 3 Do you see that?
 4 A. Yes.
 5 Q. Okay. It says: "After assuming leadership
 6 of the Information Technology department in New York
 7 in June 2003, I learned that tapes made in the New
 8 York office were stored at 200 Liberty Street in New
 9 York City."
 10 Do you see that?
 11 A. Yes.
 12 Q. "In or around July 2003 I observed a large
 13 collection of these tapes stored in a locked file
 14 cabinet inside a locked equipment cage at that
 15 location."
 16 Do you see that?
 17 A. Yes.
 18 Q. Now, by the time you made that observation
 19 that you are putting forth in your declaration,
 20 Mr. Llanes, isn't it a fact that those tapes had
 21 already been accessed and were being worked with by
 22 the Mayer Brown firm?
 23 A. At that time I observed it?
 24 Q. Right.
 25 MR. GUIDO: If you know.

1 J. LLANES
 2 declaration was produced, I don't know who it's
 3 going towards or what specific case it's going
 4 towards. All I know is the SEC was asking me about
 5 the tapes in general. And all I could say to it is,
 6 yes, in 2003 I did notice that there were a bunch of
 7 tapes back there.
 8 Q. Okay.
 9 A. Now --
 10 Q. Go ahead. I'm sorry, I didn't mean to
 11 interrupt you.
 12 A. Now, whether or not those were the actual
 13 tapes that were specific to this case, I can't tell
 14 you that, just because I don't know. I just know
 15 that there were tapes back there.
 16 Q. Okay.
 17 A. So as a whole, looking at everything as a
 18 whole, I guess, is where I'm saying.
 19 Q. I see. So when the sentence reads: "On or
 20 around July 2003," and I'm reading from paragraph 7
 21 of the supplemental declaration, when it says: "In
 22 or around July 2003 I observed a large collection of
 23 these tapes stored in a locked file cabinet inside a
 24 locked equipment cage at that location," when you
 25 say that in the declaration, you are just saying you

1 J. LLANES
 2 A. I mean, I can't tell you if those were the
 3 tapes. I mean, I do know that those were NiceLogger
 4 tapes.
 5 Q. But you don't know exactly what they were?
 6 A. I know that they were NiceLogger tapes. I
 7 didn't know if those were tapes that they were
 8 working -- I mean, I do know that we were -- I do
 9 know that we were pulling tapes. I just observed
 10 that there were a lot of back-up tapes.
 11 Q. I see. When I read paragraph 7,
 12 Mr. Llanes --
 13 A. Yes.
 14 Q. -- just coming to this fresh, it looks to
 15 me like you are trying to say that you observed
 16 tapes relevant to this case that were under lock and
 17 key in this locked equipment cage at Refco.
 18 Is that what you are trying to say?
 19 MR. GUIDO: Are you testifying, counsel?
 20 Q. Is that what you are trying to say?
 21 MR. GUIDO: Leading.
 22 A. No. No.
 23 Q. So --
 24 A. I'm saying -- how can I say this again?
 25 I'm saying, once again, right, that when this

1 J. LLANES
 2 saw tapes in there, you don't know whether those are
 3 the tapes relevant to this SEC versus Andreas Badian
 4 matter or not?
 5 A. Right. All I'm just saying is there were a
 6 collection of tapes that I know the whereabouts of,
 7 and they were in a locked drawer in a locked cage,
 8 yes.
 9 Q. Do you have any understanding as to why
 10 that's in the declaration, if it doesn't necessarily
 11 have anything to do with this case?
 12 MR. GUIDO: Objection.
 13 A. No, I think they just -- again, from my
 14 perspective it was do you know where the tapes were,
 15 and my answer was yes. Okay. Then where were the
 16 taped located? They were in this location.
 17 Q. What tapes?
 18 A. The back-up NiceLogger tapes.
 19 Q. But were you aware when you put that down
 20 that there had already been work being done on
 21 NiceLogger tapes or recordings from -- relevant to
 22 this particular lawsuit, that that had already been
 23 done prior to your observation of these tapes in the
 24 equipment cage?
 25 A. I'm sorry. Yes, I do know what you are

1 J. LLANES
 2 saying here.

3 Do I know that those -- I know that those
 4 are NiceLogger tapes, of the tapes that we used to
 5 record voice recordings, as a whole, from -- from
 6 the New York office at that particular location at
 7 200 Liberty.

8 Do I know that those were the actual tapes
 9 that were being worked on for this specific case?
 10 The answer is no. I do know that we were pulling
 11 tapes. Whether or not it was from that particular
 12 location -- I do know that we were pulling tapes,
 13 and then when I had requested folks for the actual
 14 tapes to be given, then, to Mayer Brown, that they
 15 were pulling tapes.

16 Now, I can't tell you that those -- that's
 17 where the tapes were, because I wasn't the -- I
 18 wasn't the keeper of those tapes, right. All I
 19 could say to folks and the team was, all right, we
 20 extracted the tapes, right, the tapes that you are
 21 working on -- I'm sorry. We extracted the voice
 22 recordings. You guys burned them on disks. We
 23 provided them to Mayer Brown. They are asking us
 24 for the tapes. I need the tapes.

25 Whether or not those were the tapes they

1 J. LLANES

2 those tapes were in a cabinet that were locked,
 3 within a cabinet that were -- and the question was,
 4 well, how did you know that? And the answer was
 5 because I saw it.

6 Q. But did you ever tell the SEC that the
 7 tapes you observed in the locked equipment cage were
 8 the tapes that they were requesting relevant to the
 9 SEC versus Andreas Badian matter?

10 A. I would not have said it was specifically
 11 to that.

12 Q. So all you told the SEC was that you saw
 13 tapes in a locked equipment cage?

14 A. Yes.

15 Q. You were not able to say which tapes they
 16 were; is that correct?

17 A. Correct.

18 Q. And if it were true that Mayer Brown, the
 19 law firm, had already been working with tapes prior
 20 to your beginning of work on this project in
 21 July 2003, then, by definition, those wouldn't be
 22 the same tapes in the locked equipment cage?

23 A. Correct, if they had those tapes already,
 24 if they were not in that locked cabinet, I --

25 Q. And the sentence that we are discussing in

1 J. LLANES

2 were pulling from that actual location, I'll
 3 speculate that it will -- that they were, but I
 4 can't tell you for sure. But I can tell you they
 5 did produce the tapes, the physical tapes, and those
 6 were, you know, again, tapes that we gave -- gave up
 7 to Mayer Brown.

8 Q. Okay. So from your perspective,
 9 Mr. Llanes, this statement that I'm reading in
 10 paragraph 7 about observing a collection of tapes
 11 inside a locked equipment cage --

12 A. Yes.

13 Q. -- are you trying to give the impression
 14 that the tapes relevant to this case were secured in
 15 a locked equipment cage as of the time you came upon
 16 them in July 2003?

17 A. Correct.

18 Q. You were trying to give that impression?

19 A. I was just saying -- I need to take a step
 20 back. It was just a statement. Whether or not it's
 21 taking that I'm -- it's just a statement, right.

22 I believe -- if I remember correct, right,
 23 the question is -- the question stemmed from where
 24 did these tapes come from. And my answer was, I
 25 knew that there were tapes that we had held, and

1 J. LLANES

2 those tapes were in a cabinet that were locked,
 3 within a cabinet that were -- and the question was,
 4 well, how did you know that? And the answer was
 5 because I saw it.

6 Q. But did you ever tell the SEC that the
 7 tapes you observed in the locked equipment cage were
 8 the tapes that they were requesting relevant to the
 9 SEC versus Andreas Badian matter?

10 A. I would not have said it was specifically
 11 to that.

12 Q. So all you told the SEC was that you saw
 13 tapes in a locked equipment cage?

14 A. Yes.

15 Q. You were not able to say which tapes they
 16 were; is that correct?

17 A. Correct.

18 Q. And if it were true that Mayer Brown, the
 19 law firm, had already been working with tapes prior
 20 to your beginning of work on this project in
 21 July 2003, then, by definition, those wouldn't be
 22 the same tapes in the locked equipment cage?

23 A. Correct, if they had those tapes already,
 24 if they were not in that locked cabinet, I --

25 Q. And the sentence that we are discussing in

1 J. LLANES

2 paragraph 7, that was a sentence drafted by the SEC
 3 lawyer; is that correct?

4 A. Correct.

5 Q. Now looking at it today, as we sit here,
 6 would it be correct to add to that sentence that the
 7 large collection of tapes that you observed in a
 8 locked cabinet may or may not have anything to do
 9 with the SEC versus Badian matter?

10 A. Sure.

11 Q. Would that be accurate?

12 A. It would be accurate.

13 Q. Still on the supplemental declaration,
 14 which is Exhibit 5, and I want you to take a look at
 15 paragraph 2.

16 MR. CONTI: Exhibit 4 you mean?

17 MR. COOPERSMITH: Yes, Exhibit 4. What did
 18 I say? Exhibit 4.

19 Q. Paragraph 2 of Exhibit 4. "This
 20 supplemental declaration provides additional
 21 information regarding Refco's taping of telephone
 22 conversations prior to June 2003."

23 Do you see that?

24 A. Yes.

25 Q. Why was, if you know, why was that

1 J. LLANES
 2 terminology "prior to June 2003" utilized in this
 3 declaration? Why pick that date?
 4 A. I do not know.
 5 Q. Well, that's when you started as IT
 6 director, approximately; right?
 7 A. Correct.
 8 Q. Now, do you understand, Mr. Llanes, that
 9 the recordings that are at issue in this particular
 10 lawsuit are in 2001?
 11 A. I do now.
 12 Q. So do you have any idea why the declaration
 13 doesn't just say as to what your knowledge is in
 14 2001?
 15 A. Because I have no knowledge.
 16 Q. Whose choice of words was that, "prior to
 17 June 2003"?
 18 A. That's probably me again not -- not editing
 19 it properly.
 20 Q. Okay. So to your -- as you can recall, did
 21 the phrasing "prior to June 2003" come from the SEC
 22 or did you come up with that phrasing?
 23 A. I did not prepare this document.
 24 Q. So it was coming from the SEC?
 25 A. Correct.

1 J. LLANES
 2 Do you see that?
 3 A. You are on 4?
 4 Q. Yes. Sorry, paragraph 3 of Exhibit 4.
 5 A. (Reading sotto voce.) Yes. Yes.
 6 Q. So why did you -- what's your understanding
 7 of the words "most or all" as used in that sentence?
 8 A. Now are we talking on the corrected -- past
 9 2003? You know what, forget that.
 10 I do know "most or all" means that the
 11 trading desks were typically recorded, if not all of
 12 them were recorded, right. We had to do that for
 13 the reason of if there were disputes on trades, or
 14 whatnot, and folks, you know, traders had to clarify
 15 some things with their customers, or whatnot.
 16 I say most or all because not all of them
 17 were recorded -- not all phone lines were recorded,
 18 because from an IT perspective, they were not
 19 recorded, the accounting folks were not recorded. I
 20 don't recall the executives being recorded. That's
 21 what I mean.
 22 Q. And is it also true that not all of Refco's
 23 offices even did the recording, as far as you know?
 24 A. There are certainly some satellite remote
 25 offices that had one or two folks there. Were they

1 J. LLANES
 2 Q. Now, in the next paragraph, which is
 3 paragraph 3, we see that same phrase again, "prior
 4 to June 2003".
 5 Do you see that?
 6 A. Yes.
 7 Q. Then it says: "I was familiar with Refco's
 8 practice of taping the telephone calls made to or
 9 from Refco's trading desks."
 10 Do you see that?
 11 A. What number are you on again?
 12 Q. In paragraph 3.
 13 A. Yes.
 14 Q. Now, it says "prior to June 2003". Can you
 15 tell me at what point precisely prior to June 2003
 16 you were "familiar with Refco's practice of taping
 17 telephone calls"?

18 A. Prior to 2003 I was not.
 19 Q. So was this first sentence of paragraph 3
 20 of Exhibit 4 inaccurate?
 21 A. That is correct.
 22 Q. The next sentence reads: "I knew that this
 23 taping occurred at most or all of Refco's offices,
 24 including its Chicago and New York offices, and that
 25 this practice had been in effect for several years."

1 J. LLANES
 2 recorded? I can't tell you.
 3 Q. So you don't know one way or the other
 4 whether all Refco offices were recorded; right?
 5 A. That's correct.
 6 Q. And in 2001 you had no specific knowledge
 7 of whether the New York office recorded all
 8 telephone conversations from traders' desks; is that
 9 right?
 10 A. I cannot say.
 11 Q. On paragraph 5 of the same Exhibit 4, do
 12 you see it says: "On two occasions prior to
 13 June 2003 I was assigned to obtain and listen to
 14 recordings made on the NiceLog logger in Refco's New
 15 York office."
 16 Do you see that?
 17 A. Yes.
 18 Q. Can you tell me exactly when that was prior
 19 to June 2003?
 20 A. Yes, and that's wrong again. I should not
 21 have said prior. It should have been after.
 22 Q. So prior to June 2003 you never were
 23 assigned to obtain and listen to any recordings made
 24 on the NiceLog logger in Refco's New York office; is
 25 that correct?

<p style="text-align: right;">Page 78</p> <p>1 J. LLANES 2 A. That is correct. 3 MR. COOPERSMITH: Can we go off the record 4 for five minutes. 5 (Recess taken from 2:22 P.M. to 6 2:25 P.M.) 7 MR. COOPERSMITH: I have no further 8 questions. 9 EXAMINATION 10 BY MR. GUIDO: 11 Q. Mr. Llanes, I'm Ken Guido. I think we 12 spoke, was it last week? 13 A. Yes. 14 Q. And I have some clarifying questions. I 15 would like to start with your last answer was with 16 regard to Exhibit No. 4, page 25 -- page 30, 17 paragraph 5. 18 You were asked a question whether or not on 19 two occasions prior to June 2003 you were assigned 20 to obtain and listen to recordings made on the 21 NiceLog logger in Refco's New York office. 22 Do you see that? 23 A. Yes. 24 Q. Okay. And you are saying that that should 25 have read on at least two occasions after June 2003?</p>	<p style="text-align: right;">Page 79</p> <p>1 J. LLANES 2 A. Yes. 3 Q. How many occasions after June 2003 did you 4 attempt to listen to recordings made on the NiceLog 5 logger in Refco's New York office? 6 A. With respect to this case or as a whole? 7 Q. Just in the whole. 8 A. There were multiple times. 9 Q. Okay. Now -- 10 A. Sorry. 11 Q. All right. Now, with regard to this 12 particular case, did you listen to any tapes on the 13 Nice logger system after June 2003? 14 A. Can you clarify who the custodians were in 15 this case? 16 Q. Let me -- let me back up. 17 I think you testified that the Nice logger 18 system recorded conversations at different 19 locations; is that correct? 20 MR. COOPERSMITH: Objection. 21 Mischaracterizes the prior testimony. 22 A. Which locations? 23 Q. Any locations. The Nice logger system, 24 what did it do? 25 A. Right. Yes --</p>
<p style="text-align: right;">Page 80</p> <p>1 J. LLANES 2 Q. Did it record conversations? 3 A. It recorded trader -- the phone calls of 4 the traders, yes. 5 Q. Okay. Now, this says, this declaration -- 6 I'm asking you questions about paragraph 5. 7 Do you have that in front of you? 8 A. Yes. 9 Q. Okay. It says you listened to recordings 10 made on the NiceLog logger in Refco's New York 11 office; correct? 12 A. Yes. 13 Q. And that was numerous times? 14 A. Yes. 15 Q. Okay. Now, with regard to -- 16 MR. COOPERSMITH: Objection. Leading. 17 Q. With regard to conversations by Spinner 18 Drillman or Graham, did you specifically look for 19 their conversations? 20 A. That is correct, yes. 21 Q. And how often did you do that? 22 A. In 2003, when I came in -- first of all, 23 that request was occurring. 24 Q. Pardon? 25 A. That request had occurred.</p>	<p style="text-align: right;">Page 81</p> <p>1 J. LLANES 2 Q. Okay. 3 A. I'm sorry. How can I state this? Prior to 4 me taking over the IT department in New York -- 5 Q. I'm only asking about you. 6 MR. COOPERSMITH: Objection. The question 7 was asked, and the witness had not completed 8 his answer. 9 A. With me -- with me listening to the tapes? 10 I did listen to once or two conversations to ensure 11 that we were pulling the tapes for that Spinner, 12 Drillman and Graham litigation request. 13 Q. Okay. Now, with regard to your use of the 14 logger system in 2003 -- 15 A. Yes. 16 Q. -- what did you do to listen to the 17 conversation? 18 A. So the Nice logger system had a front end, 19 of which -- the Nice logger system had a front end 20 system, of which you were able to listen to WAV file 21 conversations -- I'm sorry -- conversations that 22 were converted into WAV files of specific -- 23 specific, you know -- 24 Q. I'm sorry. 25 A. -- conversations.</p>

1 J. LLANES

2 Q. That's not what I asked you.

3 My question is: What did you do to start
4 listening to the conversations?5 MR. COOPERSMITH: Objection. Assumes facts
6 not in evidence.

7 A. Double click a restored WAV file.

8 Q. Well, were the files on the logger system
9 in WAV files or were they subsequently into WAV
10 files?

11 A. They were subsequently into WAV files.

12 Q. So my question for you is: When you
13 listened to conversations after 2003, you said
14 numerous times you were only listening to WAV files?

15 MR. COOPERSMITH: Objection.

16 Mischaracterizes prior testimony.

17 A. Whenever I -- understand that whenever I
18 listened to them, right, I wasn't the primary
19 individual that was pulling them. I would listen to
20 one or two just to ensure that we were getting --
21 how can I say this -- that the data that we were
22 providing to counsel was workable data. Meaning the
23 only time I listened to them was to ensure that it
24 wasn't choppy. It, meaning data, meaning the WAV
25 file, wasn't choppy. It wasn't -- that it was a

1 J. LLANES

2 decent enough data that we could actually burn onto
3 a disk, right.4 I wasn't listening just to listen to it. I
5 was listening to ensure that what we were giving to
6 counsel was data that was -- I was just double
7 checking the integrity of it.

8 Q. Okay.

9 A. Understand not integrity that it was true
10 and right, it was checking that it was available and
11 audible -- audio-able. Does that make sense?12 Q. Yeah, but can I ask you a question? Were
13 you essentially doing what you would interpret to be
14 a quality control on those tapes?

15 A. Sure.

16 MR. COOPERSMITH: Objection. Leading.

17 Q. Now, with regard to that, in 2003 whenever
18 you went back and looked or listened to tapes, did
19 you ever determine that the tapes were inaccurate?

20 MR. COOPERSMITH: Objection.

21 Mischaracterizes prior testimony.

22 A. I can't say if they are inaccurate.

23 Q. Well, did you ever find that there were
24 gaps on the tapes that didn't make any sense in
25 terms of the flow of conversations?

1 J. LLANES

2 MR. COOPERSMITH: Objection. Leading.

3 A. No.

4 Q. Now, your experience with the taping system
5 in New York, I think you testified, started in June
6 of 2003, or sometime in 2003?

7 A. In New York.

8 MR. COOPERSMITH: Objection.

9 Mischaracterizes prior --

10 Q. Pardon?

11 A. In New York?

12 Q. Yeah.

13 MR. COOPERSMITH: I'm sorry. Objection.

14 Mischaracterizes prior testimony. I'm sorry
15 for the interruptions, but I have to object for
16 the record, Mr. Llanes.17 MR. CONTI: And why don't you take a breath
18 before answering his questions so that he can
19 get his objections in.

20 A. Okay. Can you ask again? I'm sorry.

21 Q. When did your experience with the taping
22 system in New York begin?

23 A. In June of 2003.

24 Q. Prior to June of 2003, did you have any
25 experience with the taping system in Chicago?

1 J. LLANES

2 A. Yes.

3 Q. Okay. And what was that experience?

4 A. There were litigation requests that we
5 pulled in the Chicago office -- sorry. Yeah. I'm
6 sorry. No, that's right.7 There were litigation -- we pulled -- I
8 worked with John Beatty to pull conversations from
9 the Chicago Nice logger system for both litigation
10 requests and for traders who had requested to
11 listen.12 Q. Now and how often did that occur prior to
13 2003?14 A. There were several litigation requests when
15 I was there in the Chicago office. I want to say
16 maybe one or -- I'm sorry. Less than five.17 In terms of pulling the -- pulling the
18 recordings or restoring -- restoring the recordings
19 for traders, that was multiple times.

20 Q. Pardon?

21 A. That was multiple times.

22 Q. Now, in any times that you pulled those
23 conversations prior to 2003, did that include
24 pulling conversations in the year 2001?

25 A. Sure.

1 J. LLANES
 2 Q. Okay. And did you do that multiple times
 3 in 2001?
 4 A. Sure.
 5 Q. And any time when you pulled those
 6 conversations, did you find that there were
 7 technical problems with the tapes?
 8 MR. COOPERSMITH: Just so we're clear, we
 9 are talking about the Chicago office?
 10 MR. GUIDO: Chicago office.
 11 A. Chicago office. I want to be accurate
 12 here. No.
 13 Q. Okay. Now, at any time that you pulled
 14 tapes from the New York office, did you ever find
 15 that there were technical problems with the tapes?
 16 MR. COOPERSMITH: I'm sorry, what time?
 17 Q. Post 2003.
 18 A. No.
 19 Q. Did the taping system, the Nice logger
 20 system, in New York change any time between 2000 and
 21 2003?
 22 MR. COOPERSMITH: Objection. Lacks
 23 foundation.
 24 A. Did it change? I cannot say.
 25 Q. You can't say or you don't know?

1 J. LLANES
 2 A. Okay. So --
 3 Q. Your answer was no.
 4 A. My answer was no. But certainly in two
 5 thousand -- 2005, post bankruptcy, I did have
 6 conversations in terms of winding it down; who
 7 does -- who does the Nice logger system go to; does
 8 it get transferred over to Man in the assets that
 9 were purchased.
 10 Q. In 2005?
 11 A. In 2005, post bankruptcy.
 12 Q. No, I understand that.
 13 I'm asking you when you took over --
 14 A. Right. I just -- I just want to clarify.
 15 Q. -- did you meet with anybody to discuss the
 16 Nice logger system?
 17 A. I did not, no.
 18 Q. Did anybody ever tell you that the Nice
 19 logger system in New York in 2001 was different than
 20 the one that you were working with in Chicago in
 21 2001?
 22 MR. COOPERSMITH: Objection. Calls for
 23 speculation.
 24 A. Right.
 25 Q. Did anyone ever tell you?

1 J. LLANES
 2 A. I do not know.
 3 Q. Did anybody ever tell you it had changed?
 4 MR. COOPERSMITH: Objection. Calls for
 5 speculation.
 6 A. No, no one told me it had changed.
 7 Q. When you took over the IT operations in the
 8 New York office, did you have meetings with people
 9 in the New York office about the Nice logger taping
 10 system when you assumed responsibility for its
 11 operations?
 12 A. No.
 13 Q. Who was responsible for the taping system,
 14 the Nice logger taping system, in New York prior to
 15 you joining --
 16 A. Prior to --
 17 Q. -- the New York office?
 18 A. Prior to me joining, there was Melissa
 19 Montella and Gregg Blauth.
 20 Can I ask you to repeat your question, your
 21 last question?
 22 Q. When you took over the IT operations in the
 23 New York office, you had meetings with people in the
 24 New York office about the Nice logger taping system
 25 when you assumed responsibility for its operations.

1 J. LLANES
 2 MR. COOPERSMITH: I'm sorry, the witness
 3 didn't answer the question.
 4 A. I can speculate.
 5 Q. I'm not asking you to speculate.
 6 I'm asking did anybody tell you?
 7 A. Nobody told me.
 8 Q. Okay. Was it your understanding that the
 9 Nice logger system that was used in Chicago was the
 10 same Nice logger system that was used in New York in
 11 2001?
 12 MR. COOPERSMITH: Objection. Lacks
 13 foundation. Calls for speculation.
 14 A. I can say it was possibly different because
 15 of the 9/11 incident.
 16 Q. Do you know any way in which it was
 17 different?
 18 MR. COOPERSMITH: Objection. Calls for
 19 speculation. Lacks foundation.
 20 A. New hardware.
 21 Q. Was the technology the same?
 22 A. Oh, yes, because it's NiceLog. I don't
 23 think we used anything different.
 24 Q. Okay.
 25 A. It may have been -- yeah.

<p>Page 90</p> <p>1 J. LLANES</p> <p>2 Q. Would you consider yourself knowledgeable</p> <p>3 about the operations of the Nice logger system?</p> <p>4 A. Knowledgeable enough to know the</p> <p>5 functionality.</p> <p>6 Q. Okay. Let me ask you some questions --</p> <p>7 A. Can I expand on that? Knowledgeable enough</p> <p>8 to know the functionality, not knowledgeable enough</p> <p>9 to know specifics like what version we were using.</p> <p>10 Q. Pardon?</p> <p>11 A. Specifics such as what version we were</p> <p>12 using.</p> <p>13 Q. Okay. Now, you were asked some questions</p> <p>14 about the large thick exhibit.</p> <p>15 What number do you have on that?</p> <p>16 A. Exhibit 3.</p> <p>17 Q. Okay. Exhibit 3. You were asked some</p> <p>18 questions about some pages on that exhibit. Let me</p> <p>19 direct your attention to those pages. I think one</p> <p>20 of them was page 8.</p> <p>21 Do you see on page 8 it has the -- it looks</p> <p>22 like Chapter 5, Setting Up Selective Recording?</p> <p>23 A. Yes.</p> <p>24 Q. And then it makes reference to various</p> <p>25 pages in that. And I think you were directed to</p>	<p>Page 91</p> <p>1 J. LLANES</p> <p>2 take a look at page 143.</p> <p>3 Will you take a look at page 143?</p> <p>4 A. Yes, I'm there.</p> <p>5 Q. And page 143 it says: "The NICE Recording</p> <p>6 Planner is an optimal feature that enables you to</p> <p>7 set up selective recording programs at a site."</p> <p>8 Do you see that?</p> <p>9 A. Yes.</p> <p>10 Q. Do you know whether or not that feature was</p> <p>11 activated in Chicago when you were working with the</p> <p>12 Nice logger system?</p> <p>13 MR. COOPERSMITH: At what time?</p> <p>14 Q. After -- prior -- 2001.</p> <p>15 MR. COOPERSMITH: Objection. Assumes facts</p> <p>16 not in evidence.</p> <p>17 A. Do I know in 2001 if in Chicago we used the</p> <p>18 selective set up recording?</p> <p>19 Q. Uh-huh.</p> <p>20 A. No, I do not know.</p> <p>21 Q. What was your understanding of how the</p> <p>22 system worked in Chicago in 2001?</p> <p>23 A. That we captured -- we captured the</p> <p>24 recordings of traders, traders that were on the</p> <p>25 floor, and the brokers that were on the desk in the</p>
<p>Page 92</p> <p>1 J. LLANES</p> <p>2 office.</p> <p>3 Q. Now your declaration, I think you were</p> <p>4 asked about -- if you look at, I think it's</p> <p>5 Exhibit 2 -- you were asked about paragraph 3. And</p> <p>6 you were asked specifically about this sentence that</p> <p>7 says: "That system," referring to the Nice logger</p> <p>8 system, "recorded all the conversations that took</p> <p>9 place on or near telephones used on Refco's trading</p> <p>10 desk."</p> <p>11 A. Yes.</p> <p>12 Q. Okay. And then I think you were then asked</p> <p>13 about paragraph -- page 145 of Exhibit 3, which</p> <p>14 talks about selective recording.</p> <p>15 At any time did you observe the Nice logger</p> <p>16 system working in Chicago, did you ever notice that</p> <p>17 the selective recording function had been turned on?</p> <p>18 MR. COOPERSMITH: Objection. Lacks</p> <p>19 foundation. Calls for speculation.</p> <p>20 A. Give me a second. I want to read this.</p> <p>21 My understanding of the Nice logger feature</p> <p>22 on Chapter 5, selective -- Setting Up Selective</p> <p>23 Recording, without reading this, is that there are</p> <p>24 specific -- it's a specific feature within NiceLog</p> <p>25 to set up a specific type of recording, right. And,</p>	<p>Page 93</p> <p>1 J. LLANES</p> <p>2 again, I don't know any of that.</p> <p>3 I will tell you that from what I know, the</p> <p>4 way NiceLog was distributed out -- out in Refco, was</p> <p>5 that the system was out there capturing specific</p> <p>6 lines and users, again, specifically for traders.</p> <p>7 It wasn't a system that was distributed in all of</p> <p>8 the full -- the full breadth of the Refco phone</p> <p>9 system, right. It was more of -- it was more of,</p> <p>10 okay, I'm going to take this person; I'm going to</p> <p>11 take that person; I'm going to take trader X, Y and</p> <p>12 Z, right.</p> <p>13 And, again, without -- without reading this</p> <p>14 or understanding this NiceLog system, or Chapter 5,</p> <p>15 I should say, all I know is that we were able to</p> <p>16 capture -- we were able to capture specific lines</p> <p>17 and specific locations, right. Whether or not</p> <p>18 Chapter 5 it was -- it was done by the selective set</p> <p>19 up recording on Chapter 5 or whether or not that was</p> <p>20 just some other method, I cannot tell you that's</p> <p>21 what they used.</p> <p>22 Q. But your declaration says the system</p> <p>23 recorded all conversations that took place on or</p> <p>24 near the telephones used on Refco's traders' desks.</p> <p>25 My question for you is: Any of those phone</p>

Page 94	Page 95
<p>1 J. LLANES</p> <p>2 lines that were set up on traders' desk, did you</p> <p>3 activate selective recording?</p> <p>4 MR. COOPERSMITH: Objection. Lacks</p> <p>5 foundation. Calls for speculation.</p> <p>6 A. I did not call to utilize the selective set</p> <p>7 up.</p> <p>8 Q. Did -- do you know whether or not anyone</p> <p>9 did?</p> <p>10 A. I do not know of anyone.</p> <p>11 Q. Was it your understanding that the system,</p> <p>12 when it was connected to the line, was intended to</p> <p>13 capture all conversations on that line?</p> <p>14 A. To my understanding, yes.</p> <p>15 Q. Both in New York and Chicago?</p> <p>16 MR. COOPERSMITH: Objection. Lacks</p> <p>17 foundation. Calls for speculation.</p> <p>18 Q. You may answer.</p> <p>19 A. Yes.</p> <p>20 Q. Now, on page 155 of this document it talks</p> <p>21 about recording programs that prevent recording.</p> <p>22 A. Yes.</p> <p>23 Q. Do you know whether in Chicago or New York</p> <p>24 in 2001 the Negative Recording Program was ever</p> <p>25 activated on the lines on the trading desks?</p>	<p>1 J. LLANES</p> <p>2 MR. COOPERSMITH: Objection. Lacks</p> <p>3 foundation. Calls for speculation.</p> <p>4 A. I do not know.</p> <p>5 Q. Were you ever told that was the case?</p> <p>6 A. I was not told.</p> <p>7 Q. Now, your declaration, your initial</p> <p>8 declaration, which is Exhibit 2, I think --</p> <p>9 A. Yes.</p> <p>10 Q. -- has attached to it copies of Sony</p> <p>11 cassettes. And when you signed that declaration,</p> <p>12 did you review the descriptions on the cassettes</p> <p>13 that were provided to you as Exhibits I through IV?</p> <p>14 A. I reviewed them briefly, yes.</p> <p>15 Q. And did you -- did you recognize any of the</p> <p>16 writing on any of those?</p> <p>17 A. I cannot tell you who wrote that, no.</p> <p>18 Q. Pardon?</p> <p>19 A. I cannot tell you who wrote that.</p> <p>20 Q. Okay. So you don't know? You can't</p> <p>21 identify the writing?</p> <p>22 A. I can't identify them, no, I cannot.</p> <p>23 Q. Will you take a look at all of them just to</p> <p>24 make sure.</p> <p>25 A. I cannot recognize any of the writing.</p>
<p style="text-align: center;">Page 96</p> <p>1 J. LLANES</p> <p>2 Q. Now I'd like to go through your Exhibit 2,</p> <p>3 your declaration --</p> <p>4 A. Sure.</p> <p>5 Q. -- and ask you some specific questions</p> <p>6 about that.</p> <p>7 In paragraph 2 on page 1 it says: "As the</p> <p>8 head of Refco's IT operations, I acquired the</p> <p>9 experience and knowledge to make this declaration</p> <p>10 about Refco's audio recordings of telephone and</p> <p>11 other conversations between and among Refco's</p> <p>12 personnel and others."</p> <p>13 Do you see that?</p> <p>14 A. Yes.</p> <p>15 Q. Is that true?</p> <p>16 A. Yes.</p> <p>17 Q. Now, I think you testified that you don't</p> <p>18 really know the details of the technology that's</p> <p>19 embedded in the NICE system; is that correct?</p> <p>20 A. Correct.</p> <p>21 Q. But you do know how it functions?</p> <p>22 A. Correct.</p> <p>23 Q. And you do know what it does and doesn't</p> <p>24 do?</p> <p>25 MR. COOPERSMITH: Objection. Leading.</p>	<p style="text-align: center;">Page 97</p> <p>1 J. LLANES</p> <p>2 A. Correct.</p> <p>3 Q. And based on your experience, do you know</p> <p>4 that it was placed on the trading desks of Refco's</p> <p>5 associated persons?</p> <p>6 MR. GUIDO: Objection. Lacks foundation.</p> <p>7 Leading.</p> <p>8 A. I do know that that's the way it was</p> <p>9 installed.</p> <p>10 Q. Okay. And in paragraph 3 it says: "Refco</p> <p>11 recorded the conversations of its registered</p> <p>12 representatives, including those telephone</p> <p>13 conversations with those with whom they discussed</p> <p>14 security transactions and other matters."</p> <p>15 Is that correct?</p> <p>16 A. Yes.</p> <p>17 Q. What was -- why did Refco do that?</p> <p>18 MR. COOPERSMITH: Objection. Calls for</p> <p>19 speculation.</p> <p>20 Q. To your knowledge.</p> <p>21 A. Why did they record the conversations?</p> <p>22 Q. Uh-huh.</p> <p>23 A. For one, I believe it was a regulatory</p> <p>24 requirement. The second one being that certainly to</p> <p>25 get the accuracy of the trades and discussions that</p>

<p style="text-align: right;">Page 98</p> <p>1 J. LLANES 2 were occurring at any given time on a trader's desk 3 for disputes, potential disputes, to clarify 4 potential disputes on trades. 5 Q. So the purpose was to ensure accuracy; is 6 that fair? 7 A. That is correct. 8 Q. Now, I think you were asked a number of 9 questions about the very last word on page 1 that 10 says "Sony DD2 and Sony DD3 disks". 11 Do you see that? 12 A. Yes. 13 Q. Now, you indicated that that should 14 essentially say tapes; is that fair? 15 A. That is correct. 16 Q. Okay. And take a look at page -- take a 17 look at page 19. 18 A. Okay. 19 Q. See where it says "Logger 4 Tape 5 20 8/29/01." 21 Do you see that? 22 A. I do see that. 23 Q. Do you see right above that it says DD 24 something there? 25 A. Yes.</p>	<p style="text-align: right;">Page 99</p> <p>1 J. LLANES 2 Q. 3, Digital Data Storage? 3 A. Correct. 4 Q. Is that a tape? 5 A. That is -- I'm sorry. 6 Q. Based on your experience, that's a tape? 7 A. That is a tape. 8 Q. You weren't trying to mislead anyone by 9 using the word "disks", were you? 10 MR. COOPERSMITH: Objection. Leading. 11 A. I was not, sir. 12 Q. Let me ask the question in another way. 13 Were you trying to mislead anybody by using 14 the term "disks"? 15 A. I was not. 16 Q. And paragraph 5 on page 2 of your 17 declaration, Exhibit 2, says: "From personal 18 familiarity with the Nice system, I know that it 19 recorded these conversations at or near the time 20 when persons using the Refco's telephone system 21 conducted these conversations." 22 Is that statement true? 23 A. Yes. 24 Q. Can you think of any way that the Nice 25 logger system could have recorded conversations that</p>
<p style="text-align: right;">Page 100</p> <p>1 J. LLANES 2 occurred at a time different than when it was 3 operating? 4 MR. COOPERSMITH: Objection. Lacks 5 foundation. Speculation. Compound. 6 Unintelligible. 7 A. I can tell you that trader -- 8 Q. Please answer my question first, and then 9 you can explain. 10 A. Okay. 11 Q. Yes or no. 12 A. Ask the question again. 13 Q. Can you think of any way that the Nice 14 logger system could have recorded conversations that 15 occurred at a time different than when it was 16 operating? 17 MR. COOPERSMITH: Object. Same objections. 18 Q. Do you want me to clarify? 19 A. Yes. 20 Q. Okay. Do you know whether or not the Nice 21 logger system could ever have recorded a 22 conversation at a time other than when the 23 conversation occurred? 24 MR. COOPERSMITH: Same objections. 25 A. Yes.</p>	<p style="text-align: right;">Page 101</p> <p>1 J. LLANES 2 Q. Okay. How would it do that? 3 A. Occasionally traders would keep their 4 phones off the hook. So as we noted before, on ARD 5 phones, which is automatic ring down to the trader's 6 lines, if the phone was off the hook, obviously it 7 would be -- it would continue to ring down to the 8 floors, which is in the pits, but yet the Nice 9 logger system would continue to record it. 10 If your question -- if -- that's how I 11 understand your question. If your question is if at 12 any time the Nice logger system recorded something 13 that it was not supposed to record -- 14 Q. No. 15 A. -- the answer is no. 16 Q. Are you asking me for clarification? 17 A. Yes. 18 Q. My question is -- let me give you a 19 hypothetical. I'm sitting here. I'm asking you a 20 question. 21 MR. COOPERSMITH: Objection. Calls for a 22 hypothetical. 23 Q. Did the Nice logger system ever record a 24 conversation that occurred in the past? 25 MR. COOPERSMITH: Objection. Calls for</p>

<p>1 J. LLANES 2 speculation. 3 A. No. 4 Q. Did it ever record a conversation that was 5 going to occur in the future? 6 A. Of course not. 7 Q. So all conversations on the Nice logger 8 system were recorded at or near the time the person 9 using the telephone system conducted the 10 conversations? 11 MR. COOPERSMITH: Objection. Leading. 12 Lacks foundation. 13 A. Say it again. 14 Q. Look at paragraph 5. 15 A. Yes, I mean -- 16 Q. I just repeated paragraph 5 for you. 17 A. Yes. 18 Q. Paragraph 6 says: "I also know that Refco 19 made these recordings as an ordinary practice in the 20 course of its regularly conducted business." 21 Do you see that? 22 A. Yes. 23 Q. Is that true? 24 A. Yes. 25 Q. And was the reason to ensure that trading</p>	<p>Page 102</p> <p>1 J. LLANES 2 activity was accurate? 3 A. Yes. And I also believe it was for 4 regulatory purposes. 5 Q. Now, it says in or about July -- 6 paragraph 7 says: "July 2003 I was the custodian of 7 the above-referenced recordings." 8 Do you see that? 9 A. Yes. 10 Q. Now, you were not the head of IT in Chicago 11 in July of 2003, were you? 12 A. I was not. 13 Q. Okay. So did you have custody of the 14 recordings in Chicago in 2003? 15 A. I did not. 16 Q. Okay. And is your reference to the 17 above-referenced recordings those that are referred 18 to in paragraph 4 of your declaration? 19 A. If these were the same tapes that were in 20 that tape library, yes. 21 Q. Okay. Now, let me ask you about how tapes 22 were maintained at Refco. And I guess I need to go 23 back to how they were created. 24 Did the Nice logger system record directly 25 to Sony DD2/DD3 tapes?</p>
<p>Page 104</p> <p>1 J. LLANES 2 A. No. 3 Q. Okay. What did it record to? 4 A. It recorded on spinning disks, hard drive 5 disks. 6 Q. Okay. 7 A. And then after a period of time it would 8 then -- it would then transfer that information to 9 these -- these magnetic tape -- these disks. 10 Q. Okay. And then when they were transferred 11 to the magnetic tapes, did the magnetic tapes stay 12 in the machine? 13 A. They did not. 14 Q. Okay. What happened to the tapes when they 15 filled up? 16 A. Typically after a period of two weeks they 17 would be rotated out. 18 Q. Okay. And where did they go? 19 A. In Chicago, I do not know. In New York 20 they went to that -- 21 Q. To what? 22 A. To the aforementioned area. The area 23 where, again, the close -- in the locked cabinet 24 behind the locked cage. 25 Q. Okay. In 2003?</p>	<p>Page 105</p> <p>1 J. LLANES 2 A. 2003. 3 Q. Okay. Do you know where they went in 2001? 4 A. I cannot tell you. 5 Q. Okay. Was it Refco's practice to keep the 6 tapes that were extracted from the loggers in a 7 secure location? 8 MR. COOPERSMITH: At what period of time? 9 MR. GUIDO: At any time. 10 A. Yes. 11 Q. And when you became the head of the office 12 in New York in 2003, was that the case? 13 A. Yes. 14 Q. Prior to you becoming the head of the 15 office in 2003, was that the case? 16 MR. COOPERSMITH: Objection. Lacks 17 foundation. Calls for speculation. 18 A. I do not know. 19 Q. Now, you were the head of the office in 20 2003; right? 21 A. I was the head of the IT department, yes. 22 Q. IT. And you were responsible for the Nice 23 logger machine operating in 2003; correct? 24 A. It was under my direction, yes. 25 Q. Okay. That's fine.</p>

<p style="text-align: right;">Page 106</p> <p>1 J. LLANES 2 Now, who was responsible for the tapes in 3 2003? 4 A. There were two individuals. 5 Q. Who were they? 6 A. Melissa Montella and Tony Visconti. 7 Q. Now, prior to 2003 who was responsible for 8 the tapes? 9 A. My understanding was my -- my predecessor, 10 Gregg Blauth. 11 Q. Okay. Now when you took over in 2003, did 12 you -- did you learn where the tapes were stored 13 after they were extracted from the Nice logger? 14 A. Yes. 15 Q. Okay. And what did you learn? 16 A. I learned that they were in the locked 17 cabinet behind a locked cage at 200 Liberty. 18 Q. Okay. Now, had any of those tapes been 19 stored in a temporary secure location prior to being 20 in the locked cage at 200 -- 21 A. At 200 Liberty? 22 Q. Pardon? 23 A. At 200 Liberty? 24 Q. Yeah. 25 A. No, not to my knowledge.</p>	<p style="text-align: right;">Page 107</p> <p>1 J. LLANES 2 Q. Not to your knowledge. 3 Were the tapes ever, to your knowledge, in 4 an unsecure location? 5 MR. COOPERSMITH: Objection. Lacks 6 foundation. Calls for speculation. 7 A. Not to my knowledge. 8 Q. Had anyone ever told you that they weren't 9 secure? 10 A. No one ever told me. 11 MR. GUIDO: Let's take a short five-minute 12 break. 13 (Recess taken from 3:06 P.M. to 14 3:11 P.M.) 15 BY MR. GUIDO: 16 Q. I think you were asked a question about 17 paragraph 7 of your supplemental declaration, on 18 page 31 of Exhibit 4. Exhibit 4 starts out Second 19 Declaration of Kenneth Guido. 20 A. Okay. 21 Q. And I think you were asked whether or not 22 you know whether the particular tapes that are 23 involved in this case were at that location. 24 Do you recall that question? Do you recall 25 the question?</p>
<p style="text-align: right;">Page 108</p> <p>1 J. LLANES 2 A. Can you -- can you recall the question? 3 Q. Do you recall being asked whether or not 4 you know whether or not the tapes that the Mayer 5 Brown firm were producing to the SEC were in that 6 storage area mentioned in paragraph 7 when you 7 became the head of the IT operation in New York? 8 A. Okay. I do recall that question. 9 Q. Okay. You recall that question. 10 And do you recall being asked whether -- 11 what your purpose of writing paragraph 7 was? 12 MR. COOPERSMITH: Objection. I think he 13 testified that he didn't write it. 14 Q. You may answer the question. 15 Do you want me to rephrase the question? 16 A. Yes, because actually -- 17 Q. Let me rephrase the question. 18 Paragraph 7 says: "After assuming 19 leadership of the Information Technology department 20 in New York in June 2003, I learned that tapes made 21 in the New York office were stored at 200 Liberty 22 Street in New York City." 23 Do you see that sentence? 24 A. Yes. 25 Q. Okay. Is that statement true?</p>	<p style="text-align: right;">Page 109</p> <p>1 J. LLANES 2 A. Yes. 3 Q. Okay. And was it the practice, prior to 4 you assuming the leadership of the office in 2003, 5 to your knowledge, to have those tapes stored at 200 6 Liberty Street in New York City? 7 MR. COOPERSMITH: Objection. Lacks 8 foundation. Calls for speculation. 9 A. To my knowledge that is where they were 10 stored. 11 Q. Okay. And how did you get that knowledge? 12 A. Because if you open up the drawers, there 13 were tapes there that indicated that date. 14 Q. Okay. Now, and when you joined -- or you 15 became the head of the department in 2003. Did you 16 observe in that locked cabinet there were tapes 17 prior to June of 2003 in those locked cabinets? 18 A. Yes. 19 Q. Okay. Now, was -- I want to repeat my 20 question again. 21 Specifically with regard to this locked 22 cabinet, was this location and this locked cabinet 23 inside a locked equipment cage the method that you 24 understand that Refco had used to secure those tapes 25 off the Nice logger system?</p>

<p style="text-align: right;">Page 110</p> <p>1 J. LLANES 2 MR. COOPERSMITH: Objection to the phrase 3 "those tapes". I'm not sure which tapes we are 4 referring to. 5 A. Yes. 6 Q. Now, I think you were asked a number of 7 questions about the Mayer Brown firm -- 8 A. Yes. 9 Q. -- producing tapes? 10 A. Producing tapes for them, yes. 11 Q. And you provided the tapes to them, or you 12 had someone provide the tapes to them; is that 13 correct? 14 A. That is correct. 15 Q. And what was the purpose of providing them 16 the tapes? 17 A. They requested the tapes. 18 Q. Okay. Do you know why they requested the 19 tapes? 20 A. I do not know. 21 Q. Did anyone tell you that part -- one of the 22 reasons was to produce the tapes to the SEC? 23 MR. COOPERSMITH: Objection. Leading. 24 A. No. 25 Q. Well, did you ever, during the time that</p>	<p style="text-align: right;">Page 111</p> <p>1 J. LLANES 2 you were pulling together tapes for the Mayer Brown 3 firm, learn that they were being produced to the 4 SEC? 5 A. Sorry, I have to think of this. No. 6 Q. So when you testified earlier that you were 7 pulling tapes for Mayer Brown's use to provide to 8 the SEC, that was inaccurate? 9 A. No. No. Hang on. Sorry. 10 I believe we actually hit on whether or not 11 it was for the DOJ and not for the SEC. 12 Q. Pardon? 13 A. I believe we -- when we were talking about 14 that question, it was specifically about the DOJ and 15 not for the SEC. Did I know whether or not Mayer 16 Brown was working for the DOJ -- I cannot recall 17 this. 18 MR. GUIDO: Could we make copies of the two 19 documents that Mr. Llanes produced. 20 MR. COOPERSMITH: Oh yeah. Sure. I forgot 21 about that. 22 Do you want to take a break so I can do 23 that? 24 MR. GUIDO: Let's take a break. 25 (Recess taken from 3:19 P.M. to</p>
<p style="text-align: right;">Page 112</p> <p>1 J. LLANES 2 3:23 P.M.) 3 BY MR. GUIDO: 4 Q. While we are waiting for this, why don't I 5 ask you some conclusion questions. 6 To your knowledge, did the Nice logger 7 system ever record conversations that did not occur? 8 A. No. 9 Q. Did the tapes generated by the logger 10 system identify the location of the conversation 11 recorded? 12 A. The tapes did not identify the location, 13 the Nice logger system did. 14 Q. Okay. The Nice logger system did? 15 A. Yes. 16 Q. The information on the Nice logger system, 17 where the conversation recorded, did it also include 18 the location? 19 A. Sorry, say again. Did the Nice logger 20 system include the location? 21 Q. Yes. Did the Nice logger -- 22 A. The Nice logger, yes, it identified the 23 location and the phone line. 24 Q. Okay. Was that called channel? 25 A. Yes.</p>	<p style="text-align: right;">Page 113</p> <p>1 J. LLANES 2 Q. And it would record -- the Nice logger 3 system would record the channel; correct? 4 A. Correct. 5 Q. Did it also record the logger on which it 6 was recorded? 7 A. Right. It would identify which logger that 8 channel was associated with. 9 Q. Okay. 10 A. Yes. 11 Q. All right. Did it also have the date range 12 or the time range of the conversation? 13 A. Yes. 14 Q. And did it also have the date of the 15 conversation? 16 A. Yes. 17 Q. And did it also have a thing called a 18 session number? 19 A. I don't recall a session number. To be 20 honest with you, I don't recall the session number 21 on that. 22 Q. Okay. Would the Nice logger record 23 anything other than what transpired at the time of 24 the conversation that was recorded? 25 A. Not to my knowledge. It was fairly</p>

<p style="text-align: right;">Page 114</p> <p>1 J. LLANES 2 accurate. It was an accurate system. 3 Q. So if it had a session number for each of 4 the conversations recorded, would that be accurate? 5 A. I'm sorry, yes. Yes. I say I'm sorry 6 because, yes, I know what you are saying now. Per 7 session was each hang up -- each particular 8 conversation, hang up. After the phone was hung up 9 or after the conversation had ended, the session 10 number would be created. 11 Q. Please don't speculate. 12 A. Okay. 13 Q. I think you just speculated. 14 A. Okay. 15 Q. Don't do that. All right. 16 Is it -- did the logger record something as 17 a session from the time it was activated by sound to 18 the time sound ceased? 19 A. By sound? 20 Q. Yeah. 21 A. Or by -- 22 Q. Voice. 23 A. It was typically when the phone was picked 24 up. 25 Q. Was it also when it was off the hook?</p>	<p style="text-align: right;">Page 115</p> <p>1 J. LLANES 2 A. If it was -- if the phone was off the hook, 3 it would pick up, yes. 4 Q. So it would pick up all of the sound until 5 sound ceased; correct? 6 A. It would pick up until the phone was hung 7 up. 8 Q. And did -- and were those recorded as 9 separate session numbers? 10 A. You asked me not to speculate, so I will 11 say -- 12 Q. You just don't know? 13 A. I don't know. 14 Q. Were any of the tapes ever altered? 15 MR. COOPERSMITH: Objection. Lacks 16 foundation. Calls for speculation. 17 Q. If you know. 18 A. Not that I know of. 19 MR. GUIDO: Do you have the exhibits? 20 MR. COOPERSMITH: So I will put on the 21 record that the witness produced two documents. 22 One is a one-page document. The other is a 23 two-page document. I've had someone make 24 copies here at our office, and I'm now giving 25 them to Mr. Guido, keeping a copy for myself.</p>
<p style="text-align: right;">Page 116</p> <p>1 J. LLANES 2 MR. CONTI: Did you get both sides? 3 MR. COOPERSMITH: He can -- 4 MR. CONTI: They were double sided. 5 MR. GUIDO: This one is double sided. 6 MR. COOPERSMITH: So I will take the 7 original back. The other one is not double 8 sided? 9 THE WITNESS: There is something on the 10 back also. 11 MR. COOPERSMITH: They are both double 12 sided. 13 (Recess taken from 3:29 P.M. to 14 3:30 P.M.) 15 BY MR. GUIDO: 16 Q. While we are waiting for that, I have one 17 other follow-up question for the sessions. And that 18 is did -- when you went back to listen to tapes, did 19 you learn that there were multiple phone 20 conversations within one session recorded on the 21 logger? 22 A. I do not know. 23 Q. You just don't recall? 24 A. I don't recall. 25 MR. GUIDO: Let's wait for the documents.</p>	<p style="text-align: right;">Page 117</p> <p>1 J. LLANES 2 (Pause.) 3 MR. COOPERSMITH: So at Mr. Guido's request 4 we had a secretary here copy the documents 5 provided by the witness. It was pointed out 6 that they were double sided copies; so now they 7 are copied in double sided form. 8 MR. GUIDO: I'd like to have the court 9 reporter mark as Exhibit 6 a one-page document 10 that has on the first page it looks like a 11 business card John G. Llanes, Director of New 12 York City IT Operations, and it's a handwritten 13 note. 14 And then I'd like to have marked as 15 Exhibit 7 a -- 16 MR. CONTI: We would like to keep the 17 originals. Can we have one of the copies? 18 MR. GUIDO: Is that the original? 19 MR. CONTI: This is the original. 20 MR. GUIDO: Do you want to keep the 21 originals? 22 MR. CONTI: Right. 23 MR. COOPERSMITH: That's fine by me. But 24 you are going to mark the exhibit, and that 25 will be the copy the witness looks at, I</p>

<p>1 J. LLANES 2 assume, the marked copy. 3 MR. CONTI: I will pass that down to the 4 reporter. 5 MR. GUIDO: That's Exhibit 6. 6 (Llanes Exhibit 6 marked for 7 identification.) 8 MR. GUIDO: And I'd like to have marked as 9 Exhibit 7 a copy of a two-page letter dated 10 May 8, 2003, from John Hewitt to Christopher 11 Ehrman. 12 (Llanes Exhibit 7 marked for 13 identification.) 14 BY MR. GUIDO: 15 Q. Mr. Llanes, will you take a look at 16 Exhibit 6. 17 A. Yes. 18 Q. Will you tell us what that is? 19 A. So as I recall it, this was in -- this was 20 in response to post bankruptcy -- 21 Q. Excuse me. Let me rephrase the question. 22 A. Yes. 23 Q. Where did you get this document? 24 A. So I got this document from my files. 25 Q. And how did it appear in your files?</p>	<p>1 J. LLANES 2 A. This was during bankruptcy that I got this 3 file. 4 Q. Was this provided to you by the SEC? 5 A. Probably. I'm not sure now. I'm 6 speculating. 7 Q. Yeah, please don't speculate. 8 A. I don't recall. 9 Q. Okay. You don't recall how you got this. 10 A. Is this your handwriting? 11 A. It is my handwriting, yes. 12 Q. Okay. And it says: "Remainder of 2001 13 tapes. All others should be with prior counsel. 14 Questions - please do not hesitate to contact me." 15 And then there is some initials. 16 A. Are those your initials? 17 A. Those are my initials, yes. 18 Q. And this was a note that you wrote at some 19 point in time? 20 A. That is correct. 21 Q. Okay. And it pertains to a production of 22 2001 Nice logger tapes? 23 MR. COOPERSMITH: Objection. Leading. 24 A. Yes. 25 Q. Now, in the back it says something.</p>
<p>1 J. LLANES 2 Can you read that into the record? 3 A. Yep. It says: "XX Refco XX, Projects, 4 Current Projects, Wind Down, SEC." 5 Q. Okay. Is that reference to a file that it 6 came out of? 7 A. This is in reference -- yes. 8 Q. Okay. And it says SEC. 9 Q. What does that refer to? 10 A. Securities and Exchange Commission. 11 Q. Okay. Now I'd like you to take a look at 12 Exhibit 7. 13 A. Yes. 14 Q. That makes reference to a transmittal of 15 tapes by Mayer Brown to the SEC on May 8th, 2003. 16 Q. Do you see that? 17 A. Yes. 18 Q. Did you have anything to do with that 19 production? 20 A. No, because it was prior to me being there. 21 Q. Okay. Does your note that says remainder 22 of 2001 tapes, was that included in Exhibit 6 23 because you knew an earlier production had taken 24 place? 25 A. That is correct.</p>	<p>1 J. LLANES 2 Q. And was it your understanding that that 3 earlier production had been to the SEC? 4 A. I cannot remember. 5 Q. Well, why does it -- why does Exhibit 6 6 come out of a file that was marked SEC? 7 A. It most likely is. Why is it in there? 8 Q. Again, that was during the wind down, and I probably 9 just stuck this -- these two exhibits in there, in 10 that -- in my electronic file. 11 Q. Well, I mean, so these -- these two 12 exhibits came from an electronic file? 13 A. Correct. 14 Q. Do you know how you received them to place 15 them in your electronic file? 16 A. Most likely e-mail. 17 Q. Pardon? 18 A. Most likely via e-mail. 19 Q. E-mail, okay. 20 Q. Can you tell by going back to that file 21 who -- who produced these to you? 22 A. I cannot, because it was just these 23 documents themselves. Exhibit 6, I believe, was a 24 JPEG. You know, I would have to look again. And I 25 believe Exhibit 7 was -- it may have been a JPEG as</p>

<p style="text-align: right;">Page 122</p> <p>1 J. LLANES 2 well. 3 Q. Well, in Exhibit 6 it says: "Remainder of 4 2001 tapes." Okay. And then it says: "Questions - 5 please do not hesitate to contact me." 6 What were you referring to about questions? 7 A. If they have any questions. If whoever was 8 receiving the rest of these tapes had any questions, 9 had any additional questions, they want more voice 10 recordings, did they want, you know, where did these 11 tapes come from. 12 Q. Did anyone from the SEC call you and 13 discuss the card on which Exhibit 6 was copied from? 14 A. I cannot remember. I'm sure -- 15 Q. Did you ever discuss the card with Jim 16 McHale? 17 A. Yes, probably. 18 Q. Now, please don't speculate. 19 A. Okay. 20 Q. To the best of your knowledge -- 21 A. To the best of my knowledge, someone 22 contacted me, and it was Jim McHale. 23 Q. Pardon? 24 A. And it was Jim McHale. 25 Q. Or was it Ken Guido?</p>	<p style="text-align: right;">Page 123</p> <p>1 J. LLANES 2 MR. COOPERSMITH: Hold on. The witness 3 wasn't done with his answer. 4 A. Let me back up. Everything is just so 5 blurred to me right now, because I cannot recall now 6 if this particular card that was sent with the tapes 7 was for the -- was for the Spinner/Drillman case 8 that was back in 2003 or if this was for the 9 remainder of the tapes that we just gave post the 10 bankruptcy in 2005. 11 So because I foolishly didn't put a date on 12 here, I can't tell you which one -- which one this 13 is actually for. 14 Q. Okay. Can I ask some clarifying questions? 15 I understand that this is many years after the fact, 16 and so it's important if you remember, you remember. 17 If you don't remember, you don't remember. 18 A. Okay. 19 Q. Let me -- so, you know, with regard to this 20 card, okay, was the card inserted in one of the 21 boxes produced by Refco in response to one of the 22 investigations? 23 A. Yes. 24 Q. And was one of the investigations the SEC's 25 investigation of Spinner and Drillman?</p>
<p style="text-align: right;">Page 124</p> <p>1 J. LLANES 2 A. To my knowledge, yes. 3 Q. Okay. And was there also an SEC 4 investigation of Refco? 5 A. Yes. 6 Q. And were tapes from the Nice logger system 7 produced in both of those investigations? 8 A. Yes. 9 Q. So when you signed your declaration, 10 Exhibit 2, that had attached to it labels of various 11 audio tapes on it, to your knowledge, was that -- 12 were those tapes produced in either the Spinner and 13 Drillman SEC investigation or the SEC's 14 investigation of Refco? 15 A. Yes. 16 Q. It was one or the other? 17 A. Yes, it was one or the other. 18 Q. And to the best of your knowledge, those 19 tapes are accurate reflections of what was recorded 20 on the Nice logger system at the time they were 21 recorded? 22 MR. COOPERSMITH: Objection. Lacks 23 foundation. Calls for speculation. 24 A. Yes. 25 Q. And at the time you signed the declaration,</p>	<p style="text-align: right;">Page 125</p> <p>1 J. LLANES 2 you were the head of the IT department at Refco? 3 A. Which declaration? 4 Q. Exhibit 2. 5 MR. COOPERSMITH: Objection. Lacks 6 foundation. 7 MR. GUIDO: Pardon? 8 MR. COOPERSMITH: Lacks foundation. 9 A. At the time I signed this declaration, 10 Exhibit 2, what was that date? 11 Q. Is it -- or is that when you were at MF 12 Global? 13 A. It was when I was with MF Global, I 14 believe. I'm trying to find a date on here. 15 Yes, I was with MF Global. 16 Q. But the production that was done in the 17 Spinner -- what you understand to be the Spinner and 18 Drillman SEC investigation and the SEC's 19 investigation of Refco occurred at a time when you 20 were the head of the IT department in New York for 21 Refco? 22 MR. COOPERSMITH: Objection. 23 Mischaracterizes the prior testimony. Lacks 24 foundation. 25 A. That is correct.</p>

1 J. LLANES

2 Q. And when you were involved in the
 3 production of the tapes, the labels of which are
 4 attached to your first declaration, Llanes
 5 Exhibit 2, as you understood, you were producing
 6 tapes that accurately reflected what was extracted
 7 from the Nice loggers --

8 MR. COOPERSMITH: Objection.

9 Q. -- at Refco?

10 MR. COOPERSMITH: Objection. Leading.
 11 Lacks foundation. Calls for speculation.

12 A. Yes, I believe them to be either for that
 13 Spinner/Drillman case or the post Refco bankruptcy
 14 case.

15 Q. Did you produce these intending to mislead
 16 the SEC?

17 A. Absolutely not.

18 Q. Did you produce these to provide accurate
 19 information to the SEC?

20 A. I did.

21 MR. GUIDO: I have no further questions.

22 MR. COOPERSMITH: I just have a few
 23 follow-up questions, Mr. Llanes.

1 J. LLANES

2 supplemental declaration.

3 A. Yes.

4 Q. And also look at the same time, if you can,
 5 at Exhibit 2, your initial declaration.

6 A. Yes.

7 Q. I notice on Exhibit 2 you sign the
 8 declaration, and it's dated December 28th, 2007.

9 Do you see that?

10 A. Yes.

11 Q. Did you fill in the date?

12 A. Yes.

13 Q. And then I notice on the supplemental
 14 declaration it's dated December 6th, 2010.

15 Do you see that?

16 A. Yes.

17 Q. Did you type in the date on that?

18 A. Yes.

19 Q. Okay. And who -- who, if you know, typed
 20 in the /S/John G. Llanes on the supplemental
 21 declaration, page 31 of Exhibit 4?

22 A. That is me. I had to do it electronically.

23 Q. So you put that on?

24 A. That is correct.

25 Q. So explain to me how that worked? Like why

1 J. LLANES

2 EXAMINATION
 3 BY MR. COOPERSMITH:

4 Q. First of all, as we discussed earlier, you
 5 were not in the New York office in 2001; is that
 6 correct?

7 A. That is correct.

8 Q. Nor were you the head of the IT department
 9 in 2001; is that correct?

10 A. That is correct.

11 Q. So in terms of what the Nice logger system
 12 was set to record or not set to record, you can't
 13 testify one way or the other as to that, can you?

14 MR. GUIDO: Objection.

15 A. In New York?

16 Q. Correct.

17 A. That is correct.

18 Q. And it's also true, isn't it, Mr. Llanes,
 19 that you can't testify that the recordings that were
 20 made in New York on the Nice logger system at Refco
 21 are complete recordings of everything on the trading
 22 desks, can you?

23 A. I do not know.

24 Q. Now, Mr. Llanes, one other thing. If you
 25 go to Exhibit 4, page 29 through 31, that's your

1 J. LLANES

2 did you sign one physically and put an electronic
 3 signature on the other one?

4 A. Time. My understanding was -- well, I had
 5 time to look this one over.

6 Q. When you say "this one," which one are you
 7 referring to?

8 A. Exhibit 2.

9 Q. Okay.

10 A. And I was able to sign that.

11 With respect to Exhibit 4, my understanding
 12 was the SEC needed this document immediately, and so
 13 I just electronically signed it. I agreed to
 14 electronically sign it.

15 Q. So is it fair to say that Exhibit 4, page
 16 29 through 31 of Exhibit 4, which is your

17 supplemental declaration, that was done, from your
 18 standpoint, in a bit of haste; is that a fair
 19 statement?

20 A. I suppose that's fair, yes.

21 Q. And is it also fair to say that you,
 22 because of that, may not have had a chance to read
 23 it over as thoroughly as you might want?

24 A. I had plenty of time to read it. I just
 25 didn't look over it.

<p style="text-align: right;">Page 130</p> <p>1 J. LLANES</p> <p>2 Q. And you wish you read it more thoroughly;</p> <p>3 is that what you are saying?</p> <p>4 A. Yes.</p> <p>5 MR. COOPERSMITH: Nothing further.</p> <p>6 MR. GUIDO: A few clarifying questions,</p> <p>7 Mr. Llanes. I hope this is our last round.</p> <p>8 THE WITNESS: No, that's okay.</p> <p>9 MR. GUIDO: I don't mean to keep you.</p> <p>10 THE WITNESS: No, as long as I'm helping.</p> <p>11 EXAMINATION</p> <p>12 BY MR. GUIDO:</p> <p>13 Q. You were -- I think you were asked whether or not you were in New York City in 2001, and that I think you answered that you couldn't testify based on your personal knowledge that the tapes were accurate from New York City in 2001.</p> <p>14 Did I hear you correctly?</p> <p>15 A. I mean, I cannot say that I was -- I did not do any QA in terms of that, in terms of those tapes.</p> <p>16 Q. But you did do a quality control for the tapes that you listened to when you were in Chicago; correct?</p> <p>17 MR. COOPERSMITH: Objection. Leading.</p>	<p style="text-align: right;">Page 131</p> <p>1 J. LLANES</p> <p>2 A. No.</p> <p>3 Q. You didn't do a quality control?</p> <p>4 A. To the ones that we provided?</p> <p>5 Q. Did you review it in Chicago?</p> <p>6 A. Did I review --</p> <p>7 Q. Prior to 2003.</p> <p>8 A. Did I review which ones in Chicago? I did not review --</p> <p>9 Q. Let me rephrase the question.</p> <p>10 A. Yes.</p> <p>11 Q. We will accept Mr. Badian's counsel's objection, and I will try and clarify.</p> <p>12 When you produced the tapes to the SEC, you didn't review each of them for accuracy, did you?</p> <p>13 A. Not every single one of them, no.</p> <p>14 Q. But you did do something to ensure yourself that they accurately reflected what was on the labels; correct?</p> <p>15 MR. COOPERSMITH: Objection. Leading.</p> <p>16 Q. Well, did you do anything?</p> <p>17 A. For the 2001 tapes and recordings that we provided for the Spinner/Drillman case, I checked to see whether or not -- I spot checked, I should say, to see whether or not the recordings that we were</p>
<p style="text-align: right;">Page 132</p> <p>1 J. LLANES</p> <p>2 providing to counsel were audible.</p> <p>3 Q. Okay. And what did you find?</p> <p>4 A. They were fine.</p> <p>5 Q. Was it the practice at Refco, when you were the head of the IT office in New York, to attempt to capture the complete conversations that were recorded on the Nice logger system?</p> <p>6 MR. COOPERSMITH: Objection. Lacks foundation. Calls for speculation.</p> <p>7 A. Yes.</p> <p>8 Q. And is it your understanding that that was the practice in New York in 2001?</p> <p>9 MR. COOPERSMITH: Objection. Lacks foundation. Calls for speculation.</p> <p>10 A. I have no reason to believe why it would be any different.</p> <p>11 Q. And when you produced the tapes to the SEC in the Spinner and Drillman case, was it your understanding that those tapes were to accurately reflect the conversations recorded on those tapes?</p> <p>12 MR. COOPERSMITH: Objection. Calls for speculation. Lacks foundation.</p> <p>13 A. Sorry, I was thinking ahead of you.</p> <p>14 Ask me the question one more time.</p>	<p style="text-align: right;">Page 133</p> <p>1 J. LLANES</p> <p>2 Q. And when you produced -- the question was -- the problem is it keeps rolling.</p> <p>3 And when you produced the tapes to the SEC in the Spinner and Drillman case, was it your understanding that those tapes were to accurately reflect the conversations recorded on those tapes?</p> <p>4 MR. COOPERSMITH: Same objections.</p> <p>5 A. Yes.</p> <p>6 Q. Okay. Now, you were asked a question about the timing for the second declaration.</p> <p>7 Does the second declaration accurately reflect your memory at that time of what had transpired that you recorded in that declaration?</p> <p>8 A. My memory at that time? Yes; however, I should have proofread a couple of the words.</p> <p>9 Q. Okay. Well, let me take you through one of the paragraphs, paragraph 6. "The method used by Refco to record, identify, and store telephone calls was essentially the same in New York and Chicago."</p> <p>10 When you signed that declaration, did you understand that to be true?</p> <p>11 A. Yes.</p> <p>12 Q. Okay. Do you understand that to be true today?</p>

<p style="text-align: right;">Page 134</p> <p>1 J. LLANES 2 MR. COOPERSMITH: Objection. Lacks 3 foundation. Calls for speculation. 4 A. Yes. 5 Q. Okay. And the second sentence says: "In 6 both locations Refco maintained seating charts 7 identifying the employee using each telephone or 8 headset in which a microphone was located." 9 When you signed that declaration, did you 10 understand that statement to be true? 11 MR. COOPERSMITH: Objection. Lacks 12 foundation. Calls for speculation. 13 A. Yes. 14 MR. COOPERSMITH: As to New York? 15 A. Sorry. 16 Q. Did you understand that to be true? That's 17 all I want to know. 18 A. Yes. 19 Q. Okay. Now and the next sentence says: 20 "The recording process was voice activated." 21 Do you see that? 22 A. Yes. 23 Q. Was that true at the time you signed the 24 declaration? 25 MR. COOPERSMITH: Same objection.</p>	<p style="text-align: right;">Page 135</p> <p>1 J. LLANES 2 A. At the time, yes. 3 Q. Okay. And is that your understanding 4 today? 5 A. No. 6 Q. Why is it different? 7 A. It's only different, as I recall, and the 8 only reason why I said it was voice activated, that 9 was just in terms of if the phone in an ARD line was 10 picked up, it just recorded. 11 Q. So the ARD line was what? 12 A. ARD line is called an auto ring down, where 13 a broker or trader who is in the office would just 14 pick up a phone, and it would automatically -- 15 without having to dial specific numbers, it would 16 just automatically ring down to a trader on the -- 17 in the pits. 18 Q. So that if there was an ARD phone off the 19 hook, it would pick up dead time? 20 A. It would pick up the conversations that are 21 around that phone. 22 Q. Okay. But it would also record, and there 23 would be nothing on the tape? 24 A. It would continue to record if there was 25 nobody talking, yes.</p>
<p style="text-align: right;">Page 136</p> <p>1 J. LLANES 2 Q. So that's what you mean by modifying your 3 testimony today based on that statement? 4 A. That is correct. 5 Q. Then the next sentence says: 6 "Conversations from each microphone were 7 automatically recorded on the Nice[Log] logger to 8 which the microphone was connected." 9 Was that statement true at the time you 10 signed the declaration? 11 MR. COOPERSMITH: Same objections. 12 A. Yes. 13 Q. Okay. And, to your knowledge, is that true 14 today? 15 A. Yes. 16 Q. And it says: "Several microphones were 17 connected to the same logger, but each microphone 18 was assigned a distinct track." 19 Do you see that? 20 A. Yes. 21 Q. Was that statement true at the time -- 22 MR. COOPERSMITH: Same objections. 23 Q. -- you signed the declaration? 24 MR. COOPERSMITH: Same objections. 25 A. Yes.</p>	<p style="text-align: right;">Page 137</p> <p>1 J. LLANES 2 Q. Is that statement true today? 3 A. Yes. 4 Q. Now, it makes reference to distinct track. 5 Does that refer to channels? 6 A. That is correct. 7 Q. Okay. To my -- and then it says: "To my 8 knowledge, there was never any uncertainty" as to 9 which Refco -- "as to which Refco employee had been 10 recorded on a particular track." 11 Do you see that? 12 A. Yes. 13 Q. Okay. Was that true at the time you signed 14 that declaration? 15 MR. COOPERSMITH: Same objections. 16 A. Yes. 17 Q. Is that true today? 18 A. Yes. 19 Q. "The system operated continuously during 20 business hours" is the next sentence. 21 Was that statement true at the time you 22 signed the declaration? 23 A. Yes. 24 Q. Is that statement true today? 25 MR. COOPERSMITH: Same objections.</p>

1
2 ----- I N D E X -----
3
4 WITNESS EXAMINATION BY PAGE
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10 ----- EXHIBITS -----
11 LLANES PAGE LINE
12 Exhibit 1 Subpoena to Testify at a 8 14
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13 Exhibit 2 Declaration of John 27 5
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of Regularly Conducted
Business Activity
14 Exhibit 3 NICE Administrator's 41 12
Manual 8.9
15 Exhibit 4 Second Declaration of 48 24
Kenneth J. Guido
16 Exhibit 5 5/30/03 letter from 56 24
John Hewitt to Christopher
Ehrman with attachment
17 Exhibit 6 two-sided photocopy of 118 6
the business card of John
G. Llanes and a note
18 Exhibit 7 5/8/03 letter from John 118 12
Hewitt to Christopher
Ehrman Bates stamped
SECLIT 0080176 and 80177

1
2 ERRATA SHEET FOR THE TRANSCRIPT OF:
3 CASE NAME: SEC vs. Badian, et al.
4 DEPOSITION DATE: November 21, 2011
5 WITNESS NAME: John Llanes
6 Reason codes:
7 1. To clarify the record.
2. To conform to the facts.
8 3. To correct transcription errors.
9 Page ____ Line ____ Reason ____
From _____ to _____
10 Page ____ Line ____ Reason ____
From _____ to _____
11 Page ____ Line ____ Reason ____
From _____ to _____
12 Page ____ Line ____ Reason ____
From _____ to _____
13 Page ____ Line ____ Reason ____
14 From _____ to _____
15 Page ____ Line ____ Reason ____
From _____ to _____
16 Page ____ Line ____ Reason ____
17 From _____ to _____
18 Page ____ Line ____ Reason ____
From _____ to _____
19 Page ____ Line ____ Reason ____
20 From _____ to _____
21
22 JOHN LLANES
23 SUBSCRIBED TO AND SWORN BEFORE ME
THIS ____ DAY OF _____, 20___.
24
25 (Notary Public) MY COMMISSION EXPIRES: _____